

September 1991

# LABOR-MANAGEMENT RELATIONS

## Tennessee Valley Authority Situation Needs to Improve



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United States  
General Accounting Office  
Washington, D.C. 20548

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**General Government Division**

B-237506

September 26, 1991

The Honorable Jim Sasser  
United States Senate

The Honorable Bob Clement  
The Honorable Jim Cooper  
The Honorable John J. Duncan  
The Honorable Bart Gordon  
The Honorable Marilyn Lloyd  
House of Representatives

This report responds to your requests regarding the Tennessee Valley Authority's (TVA) labor-management relations. The report evaluates the basis for TVA's exemption from federal labor relations laws that apply to most other federal agencies and presents alternatives for improving TVA's labor-management relations.

We are sending copies of this report to appropriate congressional committees, the Chairman of the Tennessee Valley Authority's Board of Directors, labor organizations representing TVA's employees, and the Secretary of Labor. Copies will be made available to others upon request.

Please contact me on (202) 275-5074 if you or your staff have any questions concerning this report. Other major contributors to the report are listed in appendix VII.

Bernard L. Ungar  
Director, Federal Human  
Resource Management Issues

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# Executive Summary

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## Purpose

The Tennessee Valley Authority (TVA) is statutorily exempt from federal labor relations laws granting employees the right to collectively bargain with employers. Nonetheless, TVA's long-standing policy has been to bargain with employees on wages and other matters regarding their employment.

Because of employee concerns about TVA's bargaining posture in recent years, six Members of Congress asked GAO to assess whether TVA's exemption was still appropriate. If not, GAO also was to identify and assess alternatives to TVA's present bargaining processes. (See p. 16.)

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## Background

Established by Congress in 1933, TVA is a regional development agency and a major electric utility. TVA management and employees operate under a collective bargaining policy and structure first adopted in 1935. In November 1990, the structure included management and two umbrella labor organizations. One organization united five unions representing about 10,000 white-collar employees and the other united 15 unions representing about 14,000 blue-collar employees.

Under 1962 and 1969 executive orders and a 1978 law, employees in most federal agencies were granted the right to organize and collectively bargain with management through their representatives. In 1976, at the request of TVA management and the unions representing TVA employees, TVA was exempted from the executive orders. Congress later exempted TVA from the 1978 act. The exemptions were prompted by labor relations described by outside reviewers as model and by the joint desire of TVA and the unions to be exempt.

TVA management and the labor organizations have negotiated agreements that establish the framework for their relationships, including procedures to be followed for resolving all disputes except those involving blue-collar wages. Under the 1933 TVA act, the Secretary of Labor is responsible for resolving TVA's blue-collar wage disputes. The act does not provide similar responsibility for white-collar wage disputes.

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## Results in Brief

Through TVA policy rather than by law, TVA employees can collectively bargain with TVA management. Under TVA's policy, its employees and their unions have some advantages over other federal agencies covered by labor relations laws, such as the ability to bargain for wages. TVA's

bargaining structure includes some provisions that are common to federal labor relations laws.

Even so, TVA employees and their unions do not have some basic rights and protections that are guaranteed by law to employees in most other private and federal organizations. These include the statutory right to collectively bargain and use certain avenues for resolving disputes.

TVA's labor relations have deteriorated in the past decade. Unions did not believe that the TVA collective bargaining process was working well for all parties. An economic downturn has contributed to this situation.

- Economic conditions have caused TVA management to reduce and realign its work force and take a harder bargaining position than in the past.
- Partly because of this tougher position, TVA management and the unions have had greater difficulty in agreeing on pay and other proposals than in the past.

Union representatives believed TVA management had unfairly used its bargaining position to obtain concessions by threatening to cancel bargaining agreements when negotiations became stymied. They cited a lack of recourse to independent panels, except for petitioning Congress or the courts, to resolve negotiation deadlocks.

GAO sees two broad alternatives for approaching the current TVA labor situation. One involves a voluntary, cooperative approach by TVA and its unions, perhaps with the help of an independent third party, to work out a framework for bargaining and dispute resolution acceptable to the parties. The other approach involves legislative changes to remove the exemption and give TVA statutorily based employee rights similar to those of other organized employees. GAO favors the cooperative approach.

If that is unworkable, GAO recommends replacing the present exemption with statutory requirements.

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## Principal Findings

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### TVA's Economic Challenges

Since the late 1970s, TVA has retrenched from an era of growth and development. This transition affected the work force and, in turn, labor relations. TVA curtailed its commitment to building nuclear power plants after incurring substantial debt, which contributed to higher operating costs and increases in electric power rates. In response, TVA took several cost-cutting actions, including a 28-percent, across-the-board cut of its permanent work force between October 1987 and September 1990. TVA has also been trying to redefine certain jobs. (See pp. 22-26.)

Management officials said the work force changes have created conflicts at times with various unions. Negotiations are more difficult and last longer now than in earlier years. However, management officials believe negotiation results show TVA employees have fared well in recent years and that relations with the unions are improving. (See pp. 23-25 and 29-30.)

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### Bargaining Right Is Union Concern

Union officials believe they are at a disadvantage when bargaining with TVA. They said they have agreed to changes not because of good faith bargaining efforts but because they had no reasonable alternative. For example, they said TVA management threatened in 1981 and again in 1986 to cancel agreements and, because TVA is exempt from laws requiring it to collectively bargain, they accepted TVA's terms rather than risk losing the privilege to bargain. (See pp. 26-29.)

As a result of amendments to agreements since 1976, TVA management has generally (1) reduced union involvement in decisionmaking and (2) reserved for itself the right to make or significantly influence final decisions when negotiations reach impasses. For example, TVA and the unions representing TVA white-collar employees no longer jointly do wage surveys. TVA now does the surveys, with only advice from the unions. (See pp. 28 and 29.)

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### Dispute Resolution Not Working Well

Although disputes can go to mediators, arbitrators, and the Department of Labor, TVA management and the labor organizations have disagreed over the use of these resources, often taking their disputes over mediation and arbitration to the courts for decisions. (See pp. 37-38.) Because of the exemption granted to TVA, its labor unions have fewer avenues for

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resolving negotiation disputes and allegations of unfair practices than organizations to which federal labor relations laws apply.

The Department of Labor is supposed to resolve TVA blue-collar wage disputes. However, these disputes have sometimes remained at Labor for several years awaiting decisions. Labor, TVA, and the unions have not agreed on criteria and procedures for resolving disputes, which has contributed to the lengthy process. (See pp. 35-36.)

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## Alternatives

The TVA collective bargaining process has deteriorated to the level that GAO believes requires a change. GAO considered two broad alternatives for approaching the TVA labor-management situation: (1) all parties work together to address the collective bargaining issues or (2) Congress removes TVA's statutory exemption and gives TVA management and employees statutory bargaining rights and protections. (See p. 46.)

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## Cooperative Approach

GAO's preferred approach is for TVA management and the unions to work together under the TVA act's authority to rebuild a sense of trust and fairness in bargaining. Doing so, however, may require assistance from an outside party, such as the Federal Mediation and Conciliation Service. The parties would also need to work with the Labor Department because of its role under the TVA act. The aim of the parties would be to establish a bargaining structure that encourages management and the unions to fairly and voluntarily reach agreement on matters of mutual interest.

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## Legislation May Be Required

If agreements cannot be worked out voluntarily, GAO believes TVA's continued exemption will no longer be appropriate. Congress could consider several legislative alternatives for providing TVA employees with specific collective bargaining rights and protections similar to those applicable to most private and federal organizations. One alternative would be to place TVA under the same law that applies to most other federal agencies. Another alternative would be for Congress to tailor a law specifically to TVA. Still another alternative would be to place TVA under the law affecting private organizations, such as Congress did in 1970 when it placed the U.S. Postal Service under parts of the National Labor Relations Act.

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## Recommendations

To improve labor relations, GAO recommends that TVA work with all the parties concerned and obtain outside assistance, if necessary, to reinstate a voluntary, cooperative approach to collective bargaining. TVA should report to Congress, within 6 months from GAO's report, on progress in addressing concerns about (1) uneven bargaining positions and (2) limited avenues for resolving disputes. TVA should include the unions' views in the report. (See p. 55.)

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## Agency Comments

TVA agreed with the voluntary approach and said no legislative action was needed to deal with the labor-management situation. TVA emphasized its vision and values for the organization and described initiatives it was pursuing with the unions, such as new agreements on contract construction work and a flexible employee benefits project. TVA did not address GAO's specific recommendations on the relative bargaining positions and limited dispute resolution avenues. The Department of Labor said it was willing to assist the parties in revitalizing their collective bargaining relationships.

Both the white-collar and blue-collar unions disagreed with TVA's position that there was no need for legislation. The white-collar union believed a voluntary approach would be ineffective in dealing with TVA's dominance and control in negotiations. The blue-collar union believed a new bargaining framework should be developed voluntarily by the parties and made a part of legislation enacted by Congress. (See pp. 55-59 and app. III-VI.)

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## Matters for Congress to Consider

TVA's progress report, including the unions' views, should assist Congress in determining if the cooperative approach is workable. If this approach is unworkable, Congress should consider applying a statutory labor-management framework to TVA. A number of legislative options are available for accomplishing this. (See pp. 48-53.)





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**Abbreviations**

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
CSRA	Civil Service Reform Act of 1978
FLRA	Federal Labor Relations Authority
FMCS	Federal Mediation and Conciliation Service
FSIP	Federal Service Impasses Panel
MSPB	Merit Systems Protection Board
NLRA	National Labor Relations Act of 1935
NLRB	National Labor Relations Board
OPM	Office of Personnel Management
TVA	Tennessee Valley Authority
USPS	U.S. Postal Service



# Introduction

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The Tennessee Valley Authority (TVA) is one of the nation's largest electric utilities. The TVA electric power system serves an area of 80,000 square miles in seven southeastern states. TVA also carries out resource development activities in the Tennessee Valley area, such as providing for flood control and improving navigation on the Tennessee River and encouraging the region's agricultural, economic, and industrial development.

TVA's power system serves 160 municipal and cooperative power distributors and more than 7 million consumers. As required by law, the power system is self-supporting out of revenues, totaling \$5.270 billion in fiscal year 1990, from power sales. Other resource development activities are funded primarily by annual appropriations, totaling about \$119 million in fiscal year 1990, from Congress. TVA's total permanent and temporary employment was 28,390 as of September 1990. Of these, 3,697 were management, 14,333 were trades and labor (blue-collar) employees, and 10,360 were salary policy, nonmanagement (white-collar) employees.

TVA was established by the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831) and is headed by a three-member Board of Directors. The President appoints the directors, and the Senate confirms the appointments for staggered, 9-year terms. The President designates one of the directors as Chairman.

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## Related Collective Bargaining Authorities

Under the broad authority granted in the TVA act of 1933, as amended, the TVA Board of Directors adopted a policy in 1935 to involve its employees in decisions affecting wages and other working conditions. Laws enacted since 1933 separately govern collective bargaining in private-sector organizations and federal agencies, but these laws do not apply to TVA.

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## TVA Act of 1933

The TVA act gave TVA broad authority to hire, compensate, and manage its work force. The act provides several guiding principles, however. It requires that TVA make appointments and promotions on the basis of merit and efficiency and that TVA pay officers, managers, and other employees no more than it pays its board members. It also requires that TVA pay "laborers and mechanics" (i.e. blue-collar employees) no less than prevailing rates for similar work in the vicinity. The act does not include a similar provision for setting the pay rates of TVA's white-collar employees.

The TVA act is silent on the right of its employees to engage in collective bargaining and the relationships between TVA and labor organizations. However, the act does require that TVA give due regard to pay rates established through collective bargaining when setting pay rates for blue-collar employees. In addition, to cover disagreements between TVA and its blue-collar workers over pay rates for these employees, the act designates the Secretary of Labor to settle such disputes.

In exercising the broad authority under the 1933 act, TVA decided to obtain employee involvement through collective bargaining. TVA adopted an employee relationship policy in 1935 that states TVA's intention to engage in collective bargaining and employee-management cooperation. Under the TVA policy, a majority of the employees as a whole or of any professional group, craft, or other appropriate unit has the right to organize and designate representatives of their choosing without coercion or restraint by management.

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## National Labor Relations Act of 1935

Congress passed the National Labor Relations Act of 1935 (NLRA) to govern labor relations in the private sector. Subsequent executive orders and a 1978 law provided employees in most federal agencies with many of the same collective bargaining rights granted in the 1935 act to private-sector employees. The 1935 act does not apply to TVA or other federal agencies except, in part, to the U.S. Postal Service (USPS). As part of the Postal Reorganization Act of 1970, Congress applied certain provisions of the 1935 act, as amended, to USPS.

NLRA protects employees' rights of association, self-organization, and designation of representatives for negotiating the terms and conditions of their employment. Among other things, the act (1) defined unfair labor practices of employers, such as interfering with employees' exercise of their rights under the act, and (2) created the National Labor Relations Board (NLRB) as an independent agency in the executive branch to administer the act. NLRB's two main functions are to (1) prevent unfair labor practices by employers or unions and (2) conduct elections to determine whether employees wish to be represented by a union and certify the results.

Congress passed the "Labor Management Relations Act, 1947" to amend the 1935 act. Among other things, the amendments defined unfair labor practices of labor organizations and their agents, such as engaging in certain strikes and restraining or coercing an employee in the exercise of the rights guaranteed in the act. In addition, the 1947 act created the

Federal Mediation and Conciliation Service (FMCS) as an independent agency in the executive branch to assist parties in labor disputes in industries affecting commerce to settle disputes through conciliation and mediation.

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## Civil Service Reform Act of 1978

The federal government established a policy on labor relations in federal agencies by an executive order issued in 1962. That order was subsequently amended by other executive orders and was replaced by title VII of the Civil Service Reform Act of 1978 (CSRA). In 1976, the president exempted TVA from a 1969 executive order on collective bargaining in federal agencies. Congress exempted TVA from title VII of the Reform Act.

The 1978 act created the Federal Labor Relations Authority (FLRA), an independent executive branch agency, to administer title VII provisions. FLRA's responsibilities include, among other things, supervising or conducting elections to select labor organizations as exclusive representatives, conducting hearings and resolving complaints of unfair labor practices, and resolving requests for exceptions to arbitrators' awards.

Under the 1978 act, FMCS provides assistance, which is similar to the assistance provided to private organizations, to federal agencies and employee representatives in the resolution of negotiation impasses. The 1978 act also created the Federal Service Impasses Panel (FSIP) as an entity within FLRA. FSIP is responsible for providing assistance in resolving negotiation impasses between agencies and employees' exclusive representatives. Under the act, FSIP or its designee is required to (1) promptly investigate any impasse presented to it under the act and (2) assist the parties in resolving the dispute. If the parties cannot resolve the impasse after FSIP's assistance, FSIP is empowered to take whatever action is necessary, including holding hearings and issuing subpoenas, to assist in resolving the impasse consistent with provisions of the act. FSIP's final action is binding on the parties unless the parties agree otherwise.

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## The TVA Collective Bargaining Structure

TVA engages in collective bargaining with two separate labor organizations. One is the Salary Policy Employee Panel representing white-collar employees, and the other is the Tennessee Valley Trades and Labor Council representing blue-collar employees. TVA has formal agreements with each of these labor organizations.



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## Panel Agreement

TVA and the Panel, which represents white-collar employees, first negotiated the Articles of Agreement in December 1950. In the articles, TVA recognized the Panel as the collective bargaining agent for matters affecting all salary policy employees, such as office employees, chemists, engineers, and safety officers who are not designated as management. The Panel is to be composed of five organizations, each representing a separate white-collar employee group. Two of the five organizations are affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the other three are independent of national labor organizations.

The articles established both the framework for TVA's relationship with the Panel and the procedures that TVA and the Panel are to follow for negotiating, modifying, or abolishing supplementary agreements. These supplementary agreements contained the substance of matters negotiated between TVA and the Panel. TVA and the Panel negotiated supplementary agreements on matters such as pay, reductions in force, grievances, and work schedules. The articles, as last revised in September 1988, had no expiration date but contained procedures that TVA and the Panel are to follow for reopening or terminating the agreement.

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## Council Agreements

TVA and the Council, which represents blue-collar employees, first negotiated three General Agreements in August 1940 and one in May 1986. The four agreements listed specific unions that TVA recognized as the bargaining agents for those classifications of employees, or crafts, identified in the respective agreements. According to the General Agreements, these unions are the "accredited representatives" of employees associated with particular crafts, and the unions are to act through the Council. Employee groupings covered by the four General Agreements, as last revised in February 1989, were as follows:

- annual operating and maintenance employees in TVA's power generating and transmission facilities;
- annual operating and maintenance employees, except those in TVA's power generating and transmission facilities;
- temporary hourly operating, maintenance, and modification employees; and
- construction employees.

The agreements cover all TVA employees in the trades and labor classifications who are members or eligible to become members, or who do the same type of work as members, of the unions identified in respective

**General Agreements.** Three of the four agreements list the same 15 unions; the other agreement, covering operating and maintenance employees in TVA's power generating and transmission facilities, lists 9 of these same unions. All 15 unions are affiliated with the AFL-CIO. Like the agreement between TVA and the Panel, the General Agreements established the framework for TVA's relationship with the Council and the procedures for negotiation and dispute resolution. Specific matters negotiated are to be contained in supplementary schedules. (App. I lists the labor unions composing the Panel and the Council as of November 1990.)

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## TVA Labor Relations Officials

TVA's structure included a Vice President for Human Resources. A Manager of Labor Relations under that Vice President served as TVA's central labor relations authority in contract negotiations and administrative and dispute resolution. TVA's Office of General Counsel advised on legal questions involving labor relations matters. The TVA Board of Directors was responsible for approving labor relations agreements negotiated on matters of major policy significance.

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## Objectives, Scope, and Methodology

In September 1989, Senator Jim Sasser and Representatives Bob Clement, Jim Cooper, John J. Duncan, Jr., Marilyn Lloyd, and Bart Gordon requested that we review TVA's labor relations. Senator Sasser and Representative Duncan each made separate requests citing various concerns of unions representing TVA employees. Representatives Clement, Cooper, Duncan, and Lloyd jointly requested a review focusing on TVA's exemption from federal labor relations laws and regulations and TVA's collective bargaining structure. To respond to these requests, we designed our review to accomplish the following objectives:

- assess the basis for TVA's exemption from federal labor relations laws in light of its historical and current labor relations policies and practices,
- compare and contrast TVA's collective bargaining policy and agreements with the federal labor relations standards, and
- assess legislative and nonlegislative alternatives for providing the parties to TVA's collective bargaining agreements with rights and obligations similar to those applicable to most other organizations.

We identified the basis for TVA's exemption from labor laws by reviewing the TVA act of 1933 as well as executive orders and federal legislation relating to labor relations in both the private and federal employment sectors. We reviewed reports, correspondence, and other records on

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TVA's exemption in 1976 from an executive order that governed labor relations in federal agencies before passage of the CSRA in 1978 and TVA's continued exemption from federal labor relations requirements.

We reviewed documentation on the evolution and current status of TVA's labor relations, including the following:

- reports describing and assessing the status of, and changes in, TVA and its labor relations, including a 1949 report by a joint committee of Congress; and prior GAO reports on TVA's programs and its labor-management relations as well as reports on related federal agencies (NLRB and FLRA) (see Related GAO Products);
- TVA's labor relations policy and its collective bargaining agreements, including all amendments to the policy and agreements made during the period from January 1975 through November 1990;
- records of negotiations held by TVA and the Council and Panel, including related records on matters referred to mediation and arbitration during calendar years 1988, 1989, and 1990; and
- all active and closed litigation cases identified by TVA's Office of General Counsel that involved labor disputes between TVA and the Panel or Council during the period January 1987 to October 11, 1990.

To obtain views on the current status of TVA's labor relations, we interviewed TVA management officials, including the Vice President for Human Resources, the Manager of Employee Relations, and other TVA officials responsible for negotiating with the Panel and Council. We interviewed Panel and Council officials, including the chairperson of the Salary Policy Employee Panel and the Administrator and Assistant Administrator of the Tennessee Valley Trades and Labor Council. We also interviewed other members of both the Panel and Council as well as local union representatives, including some who had participated in negotiations with TVA management in recent years. We reviewed correspondence and other records provided by these officials on their interactions with TVA, Congress, and the Department of Labor concerning TVA's labor relations.

To assess the TVA collective bargaining structure, including procedures for resolving negotiation disputes, we compared provisions of TVA's labor relations policy and related agreements with provisions of federal labor laws (e.g., NLRA and title VII of CSRA) to identify similarities and differences. We also examined the labor relations provisions of the Postal Service Reorganization Act of 1970, including provisions for the resolution of disputes through arbitration. We interviewed NLRB, FLRA,

and USPS officials concerning collective bargaining laws and procedures applicable to organizations other than TVA. We also interviewed Labor officials who were responsible for processing and resolving wage rate disputes referred to Labor by TVA and labor organizations representing TVA's blue-collar employees.

Our review focused on the collective bargaining structure and processes used by TVA and the unions to negotiate pay and other employee working conditions. We were principally concerned about TVA's exemption from federal labor relations laws. We did not evaluate every aspect of TVA's employee relations program and thus obtained limited information on local cooperative committees established to develop a spirit of teamwork between blue-collar employees and their supervisors. We also did not evaluate TVA's plans to develop in cooperation with the Panel and Council a total quality management program, which was just getting started at the conclusion of our work. Nor did we determine whether TVA's personnel policies comply with merit systems principles and other requirements of federal personnel laws and regulations.

TVA, the Panel, the Council, and the Department of Labor provided written comments on a draft of this report. These comments are presented and evaluated in chapter 5 and are reprinted in appendixes III through VI.

We did our review from November 1989 through November 1990 in accordance with generally accepted government auditing standards.

# TVA's Economic Situation and Its Labor Relations Have Changed Since the 1978 Exemption

Until about the mid-1970s, TVA's labor-management relations were viewed as successful by TVA management, labor organizations representing its employees, and some outside organizations. Because of this view and the fact that TVA management and the labor organizations favored TVA's independent bargaining status, TVA was exempted from federal labor relations requirements applicable to most private and federal organizations.

Since the 1978 statutory exemption, however, those labor organizations representing all of TVA's white-collar employees and most of its blue-collar employees believed that their relations with management had deteriorated. In all likelihood, TVA's changing economic situation has contributed to that view.

## TVA Labor Relations Once Seen as Model

As the federal government's policy on collective bargaining in federal agencies evolved over the years, TVA and labor organizations supported TVA's voluntary participation in collective bargaining and opposed the application of federal labor requirements to TVA. TVA's labor relations policy was favorably reviewed as early as 1949. That year, the Joint Committee on Labor-Management Relations of the 81st Congress reported that TVA's labor relations were excellent and could serve as a model for other organizations to follow.

According to the Joint Committee's report, TVA's relations with labor were relatively free of strife and discord. Among the reasons given for this success were the following:

- TVA decided early in its history on a policy of using its own employees rather than using contract employees for construction projects, thereby making TVA the employer;
- labor had complete trust and faith in management's motives;
- the Tennessee Valley Trades and Labor Council was composed of responsible unions affiliated with the American Federation of Labor;<sup>1</sup>
- labor and management both knew the value and meaning of cooperation; and
- TVA kept the Council fully informed of all events that were of interest to the Council.

<sup>1</sup>The report did not extensively cover the Salary Policy Employee Panel, which was just being formed at the time of the 1949 report.

Among the Joint Committee's many specific findings were that the majority of employee grievances were never carried beyond the employee's supervisor and only one union strike had taken place since TVA's creation 16 years earlier. This strike occurred in 1937 and involved a jurisdictional question between two craft unions, according to the Joint Committee.

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### TVA Exempted From Executive Order and Law Applicable to Federal Agencies

At the time of the Joint Committee's report in 1949, the federal government did not have a comprehensive policy on labor relations in federal agencies. A policy for federal agencies was established in 1962 with the issuance of Executive Order 10988. Government corporations, such as TVA, were not specifically mentioned in the 1962 order. However, Executive Order 11491, issued in October 1969, replaced the 1962 order and defined "agency" to specifically include government corporations. The 1969 order established the Federal Labor Relations Council to administer and interpret the order.<sup>2</sup> The order assigned responsibilities, such as issuing regulations and resolving certain complaints of alleged unfair labor practices, to the Assistant Secretary for Labor-Management Relations, Department of Labor.

In April 1975, the Department of Labor issued a decision and order on unfair labor practice complaints filed by 75 employees against TVA under Executive Order 11491, as amended. Labor ordered TVA to cease and desist from certain actions alleged in the complaints. Subsequent to that order, TVA management and its labor organizations representing TVA employees requested that the Federal Labor Relations Council remove TVA from coverage of the 1969 executive order.

The President issued Executive Order 11901 in January 1976 excluding TVA from coverage of Executive Order 11491, as amended. In 1976, the Federal Labor Relations Council explained that TVA should be exempted because of (1) TVA's unique labor-management relationship, (2) the benefits to the parties of maintaining the stability of their existing relationships, and (3) the joint desire of TVA and the labor organizations to exclude TVA and its collective bargaining from the order.

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<sup>2</sup>The Council consisted of the Chairman of the former Civil Service Commission (now the Office of Personnel Management (OPM)), the Secretary of Labor, and the Director of the Office of Management and Budget.

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Concerns About  
Bargaining Structure  
Began Surfacing in 1978

In 1978, at the request of a Member of Congress, we reviewed aspects of TVA's labor-management relations program, including employees' control over their designated union representatives and the access of both TVA employees and their representatives to third-party adjudication bodies.<sup>3</sup> Our report focused mainly on relations between TVA and the Council, representing TVA's blue-collar employees. We concluded that TVA employees who were dissatisfied with the collective bargaining agreements or the representation of the employees' interests by union officials had few avenues of relief.

On the basis of that review, we recommended to Congress that TVA be covered by either then-existing statutory labor relations procedures or any forthcoming legislative procedures applicable to other federal employees. We also recommended that TVA, as a party to the collective bargaining agreements with the Council, increase employee influence over the bargaining process. In lengthy rebuttal to our report, TVA challenged the basis for our conclusion and said it had taken no action to implement our recommendation. Soon after issuing our report in 1978, TVA employees represented by the Council sent us a petition signed by 571 employees supporting our report and disagreeing with TVA's position on our recommendations.

After our 1978 report, Congress passed the CSRA, and title VII of that act excluded TVA and some other agencies from all provisions relating to labor relations.<sup>4</sup> Agency exemptions in title VII followed the coverage under the previous governing executive order. In 1980, we repeated the recommendation made in our 1978 report, and TVA's position remained unchanged.<sup>5</sup>

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<sup>3</sup>Additional Safeguards Needed for Tennessee Valley Authority Trades and Labor Employees to Protect Their Interests in Collective Bargaining (FPCD-78-12, Mar. 15, 1978).

<sup>4</sup>Title VII specifically exempts from its coverage TVA, GAO, and certain agencies involved in intelligence, investigative, and security work. It also exempts agencies doing labor relations work, namely, the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, FLRA, and FSIP. Although GAO is exempted from title VII, GAO's labor relations are governed by separate legislation passed in 1980.

<sup>5</sup>Triennial Assessment of the Tennessee Valley Authority—Fiscal Years 1977-1979 (EMD-80-91, Aug. 13, 1980).

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## TVA's Economic Situation Changed in the 1980s

Our earlier work at TVA (see Related GAO Products) showed that TVA confronted significant economic challenges in the 1980s, which required major adjustments in its plans and operations. A review of these challenges and TVA's response can help put into perspective changes in its work force and labor relations.

To meet growing demands for electricity, in 1967 TVA began constructing the world's largest thermal nuclear plant—Browns Ferry located in northern Alabama—with three nuclear generating units. By mid-1978, TVA had 14 additional nuclear units under construction or planned. In the late 1960s and early 1970s, power sales were growing at a steady rate—about 8 percent per year—and TVA forecasted a high rate of growth in demand through the mid-1970s.

Following the oil embargo in the 1970s, the economics of the electric power industry changed. Consumers reacted to higher energy prices through conservation and new energy technologies, fuel and interest costs rose, and the time required to build nuclear plants increased. By the 1980s, TVA faced an economic recession, a declining work force, and increasing labor-management apprehension.

A slower rate of growth in the demand for electricity brought on the prospects of surplus TVA generating capacity. The annual rate of increase began to drop in the 1970s and early 1980s, and TVA experienced an actual decline in demand from the 8-percent growth rate a few years earlier. TVA began canceling nuclear units under construction, thus incurring significant costs to terminate contracts and shut down construction sites. By 1982, five nuclear units were operational, four were under construction, four were deferred, and four were canceled.

TVA's annual report for fiscal year 1982 described a year dominated by a recession. TVA sales to large industrial users served directly by TVA slumped to the lowest level in 20 years. Along with canceling and deferring nuclear units, TVA cut employment by 20 percent, which affected virtually all categories of TVA employees. TVA increased electrical power rates to cover its increasing power generation costs.

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## TVA to Further Reduce Costs and Stabilize Electrical Power Rates

In 1988, the President appointed a new Chairman of the TVA Board of Directors. That year, the Board announced that one of TVA's goals was to operate a more competitive power system by not increasing electrical power rates for 3 consecutive years. In 1989, TVA's objectives included offering competitive power rates and comparing TVA performance with



its best competitors in order to improve quality and lower costs. TVA also continued organizational changes to shift the focus from construction and modification to operation and maintenance of facilities.

TVA continued to take cost-reduction steps in 1990. One step was to refinance long-term debt, which TVA said yielded an estimated \$150 million of savings in annual interest costs. TVA's long-term debt had grown from about \$2.9 billion in June 1975 to \$18.6 billion in September 1990, which significantly increased related interest costs to TVA.

In July 1990, TVA announced that it would hold electrical power rates steady for the third consecutive year. According to the Chairman, TVA had become more streamlined and competitive, and stabilizing power rates had provided a boost to economic growth. The Chairman said TVA's goal was to be the most competitive electric utility in North America and the most efficient and productive agency in federal service.

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### TVA Employment Grew and Then Declined in the 1980s

The changes in TVA power demands and the reduced commitment to constructing nuclear power plants significantly affected TVA employment levels. Overall TVA employment, including temporary blue-collar employees, increased from about 29,000 to 52,000 between 1975 and 1980 and then dropped in most of the next 10 years to about 28,000 total employees in 1990. (See fig. 2.1.)

During the period from 1987 through 1990, TVA made significant reductions (about 28 percent overall) in the number of permanent employees. These reductions affected employees represented by the Panel and the Council as well as those in management positions. (See fig. 2.2.)

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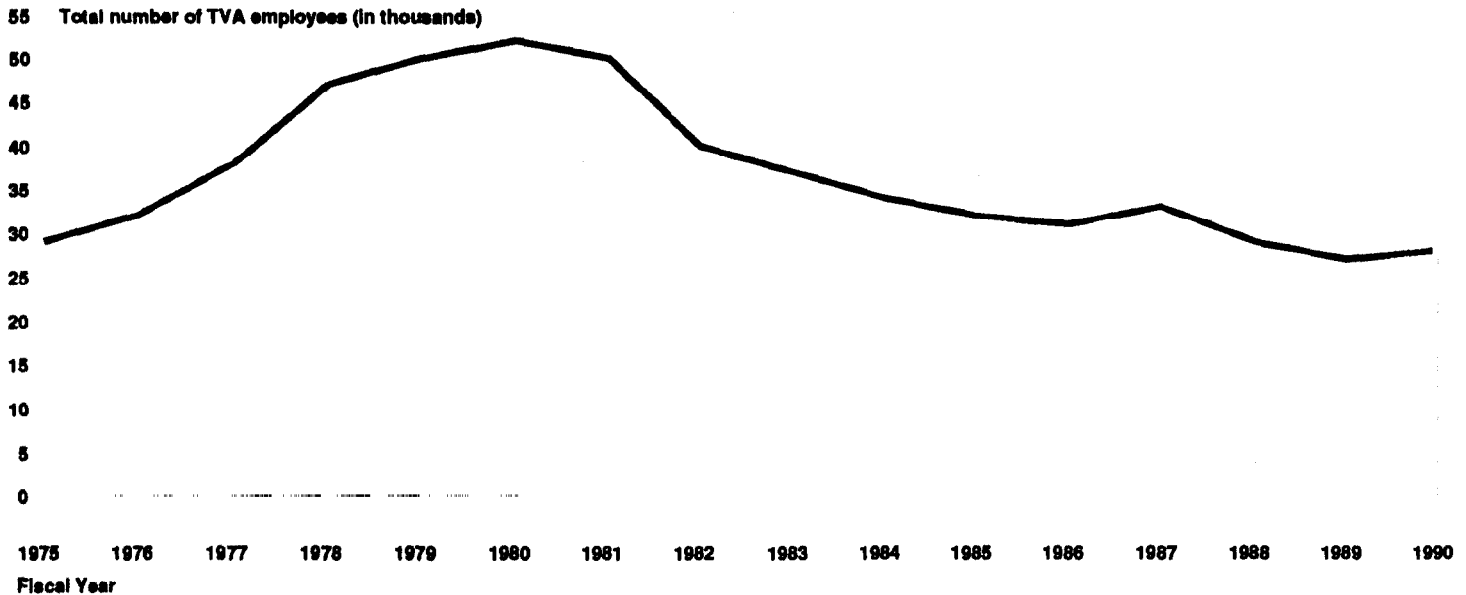
### Work Force Composition Has Changed

The composition of TVA's work force has changed along with its employment levels. TVA's transition away from an era of heavy plant construction affected blue-collar employees in particular and, in our view, has contributed to strained relations between TVA and the Council representing the 15 different crafts in the TVA work force. Disagreements about the use of employees in these crafts began as early as 1975 with the establishment of "mixed crews." The unions said the use of mixed crews would allow TVA to assign any employee to any job regardless of the employee's trained craft skills.

According to the TVA Manager of Labor Relations, in September 1990 TVA proposed to establish three new job classifications to increase efficiency at TVA's operating power plants. For example, a maintenance mechanic

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Figure 2.1: Trend in TVA Employment, Fiscal Years 1975 Through 1990



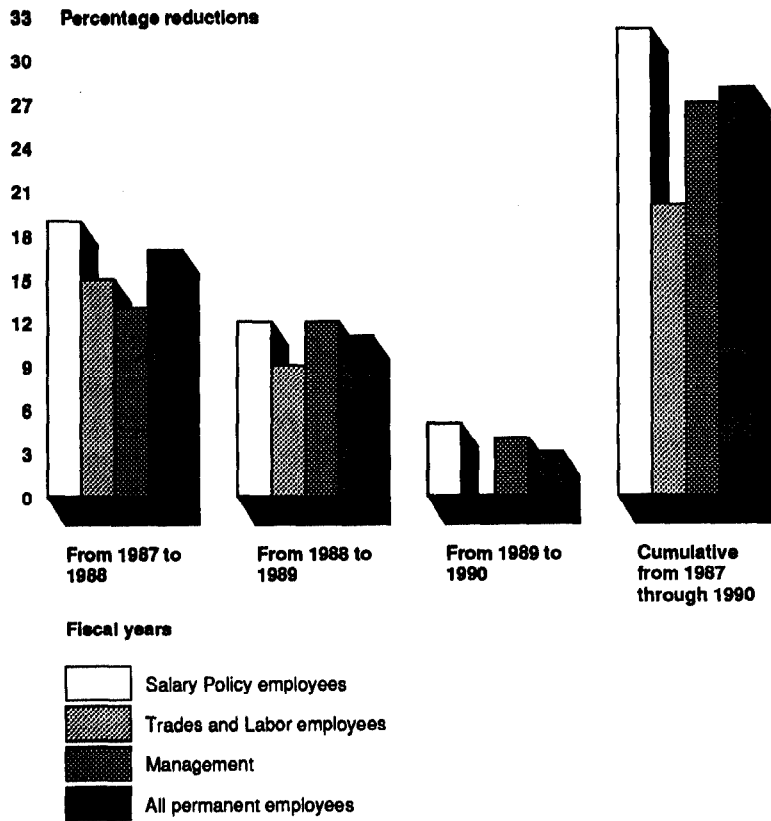
Note: Employment numbers include permanent and temporary TVA employees.

job would combine boilermaker, machinist, and steamfitter jobs. According to the TVA manager of labor relations, some of the proposed jobs would merge different union workers into one job classification. This merger is one of the reasons that the unions disagreed with TVA's proposal.

Along with these new job classifications, the TVA manager of labor relations said that TVA wanted to reduce costs by doing more of its construction work through contractors. This official said the use of contract employees is less costly to TVA. He said contractors are covered by state worker compensation laws and thus incur lower costs than those incurred by TVA when employees are injured on the job.

An increased use of contract employees rather than TVA employees would indicate a change from the philosophy TVA adopted in earlier years. As stated previously, the Joint Committee said in its 1949 report that one of the reasons for TVA's excellent labor relations was its decision to use its own employees rather than contract employees.

Figure 2.2: Reductions in Force, Fiscal Years 1987 Through 1990



Note: The employment data do not include temporary trades and labor employees. The number of such employees increased by about 62 percent, from 4,927 to 7,995, during the period from September 30, 1987, through September 30, 1990.

## Unions Believed Relations With Management Had Deteriorated

Panel and Council officials believed that the late 1970s, when TVA began to encounter major economic and financial challenges, marked the beginning of a downturn in their relations with TVA management. Some of the unions believed that relations had eroded to the point that only a legislative solution will address their concerns.

In 1989, Panel and Council officials circulated a draft paper entitled "Labor Relations in the Tennessee Valley Authority: A Petition for Legislative Relief." The petition detailed the deterioration of relationships between TVA and both the Panel and Council since the mid-1970s. It proposed establishing in law collective bargaining rights for TVA employees

similar to the rights of USPS employees. In October 1989, the Panel approved a draft of proposed legislation to have NLRA applied to TVA in a manner similar to its application to USPS.

Although the Panel continued to propose the legislative change, in March 1990 the Council voted to withdraw its support for the petition it had earlier supported to place TVA under NLRA. According to the Council Administrator and other Council officials, the issue was brought to a vote because of disagreement among the unions regarding a proposal on employee health insurance coverage.

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### **Unions Were Concerned About Unequal Bargaining Position**

According to our discussions with Panel and Council officials, they believe that the absence of statutory authority to collectively bargain with TVA worked unduly to their disadvantage and to TVA's advantage. These officials said that they agreed to change collective bargaining agreements not because of good-faith bargaining but because they had no reasonable alternative. They cited instances in which they perceived that TVA management had threatened to terminate the agreements in order to resolve negotiation disputes with the Panel and Council. A summary of each of these instances follows.

### **TVA-Panel Dispute**

Panel officials furnished information showing what they believed was a threat by TVA to force agreement on a salary survey in 1981. TVA and the Panel had disagreed on the firms to be included in the survey. According to Panel officials, they filed suit in court to prevent TVA from unilaterally proceeding with the survey, and the court ruled that the dispute had to be submitted to arbitration. The officials said that TVA did not agree to arbitration. Rather, TVA's general manager gave the Panel written notice in May 1981 that a joint conference would be held to conclude the negotiations. The notice said that the Panel was not cooperating in establishing salary rates.

According to Panel officials, TVA also insisted at the time that the Panel agree to remove binding arbitration from the Articles of Agreement for resolving pay disputes. Amendments to the agreement made in 1981 changed arbitration from binding to advisory. Other amendments to the agreement in 1981 provided that TVA would do the salary surveys after consultation with the Panel. According to Panel officials, before 1981 TVA and the panel jointly did surveys. Panel officials said that TVA management used the threat of cancellation to get changes made to the agreement in both 1981 and 1984.

In this regard, between 1981 and 1984 the articles were amended several times to provide specific dates on which the articles would expire unless TVA and the Panel reached agreement to extend them. For example, as revised on October 1, 1984, the articles provided that they would expire by October 1, 1987, unless extended by the parties, and stated further that:

"During this three-year contract, either party may call a joint conference to address critical issues, the resolution of which is essential to the continuation of the contract. Failure to resolve these issues may result in notice of contract termination being given by either party at least 60 days prior to October 1, 1986. Should this notice be given, the contract will terminate on October 1, 1986."

Subsequently, the articles were revised to provide that they would continue in effect but could be reopened or terminated at any time by TVA or the Panel in joint conference called with 60 days' notice of either party. This provision remained in effect as of November 1990.

#### **TVA-Council Dispute**

The Council also furnished information showing what it considered to be a threat by TVA management during negotiations. In January 1986, the TVA general manager called for a joint conference to (1) pursue critical issues from a wage conference that were left unresolved and (2) cover the Council's plans on arrangements to govern its internal operations.

The notice said that if TVA and the Council did not agree on satisfactory arrangements before or during the joint conference, TVA might exercise its right to provide the Council with a notice of termination of the General Agreements. Following the notice, the General Agreements were revised to give TVA more discretion in deciding the assignment of work to employees.

#### **Unions Perceived TVA's Actions as Coercive**

When issuing the notices to the Panel and Council, TVA exercised a right under its agreements in effect between TVA and the two labor organizations at the time of the notices. Even so, Panel and Council officials believed that TVA's notices were designed to elicit concessions that the Panel and Council otherwise would not have made. These officials indicated to us that, because TVA had no legal obligation to engage in collective bargaining, the Panel and Council either had to accept TVA's terms or risk losing the privilege to bargain.

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## Unions Believed Dispute Resolution Procedures Favored TVA

As last revised in 1989, the agreements between TVA and both the Panel and Council provided for the use of arbitration to settle those disputes by law not required to be referred to the Department of Labor to be resolved through negotiation or mediation. However, Panel officials believed that restrictions on arbitration procedures worked unduly to TVA's advantage and thus limited arbitration's usefulness. These officials said they agreed to the restrictions in order to avoid the possibility of TVA terminating the agreement.

Under the agreements, the terms for resolving negotiation disputes differed between the Panel and the Council. As provided in the TVA act, disputes between TVA and the Council concerning prevailing rates are to be referred to the Secretary of Labor, and the Secretary's decision is final. Arbitration is available for resolving other disputes between TVA and both the Panel and Council. In our view, the procedures for arbitration can work to TVA's favor because

- TVA must agree to arbitration in the case of nonpay disputes with the Council,
- the arbitrator's decision is advisory in the case of nonpay disputes with the Panel, and
- the arbitrator may review only those data that TVA agrees to provide to the arbitrator in the case of pay disputes with the Panel.

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## Amendments to Agreements Indicated Reduced Labor- Management Cooperation

Our review of TVA's collective bargaining agreements showed that the extent of cooperation between TVA and the unions in decisionmaking changed materially in the 1980s. Some of the amendments to the TVA-Panel agreement indicated reduced labor-management cooperation. For example, in 1981, along with the amendments on arbitration and salary surveys discussed previously, TVA and the Panel agreed to delete provisions from the Articles of Agreement calling for white-collar employees to participate with management in cooperative conferences. The Panel Chairperson said these conferences had been held since 1947. Among other objectives, the conferences were to strengthen morale, improve communication between employees and management, improve work quality, and eliminate waste. According to Panel officials, the level of trust between the Panel and TVA management declined to the point that the Panel did not believe the cooperative conferences would be productive.

The General Agreements between TVA and the Council were also amended several times during the 1980s. Some of these amendments

also shifted decisionmaking away from a cooperative TVA-Council process. For example, amendments in 1986 allowed TVA to determine the procedures to be followed in the surveys made to determine prevailing pay rates. Until 1986, the procedures were determined by a joint TVA-Council committee. Further, in 1986, a provision was added to the General Agreements giving TVA greater discretion in the assignment of blue-collar employees without regard to craft jurisdiction, i.e., the employees' membership in a particular union.

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## TVA Management Believed Collective Bargaining Was Working

TVA officials, including the Vice President for Human Resources and the Manager of Labor Relations, said that negotiations had become more difficult. However, they believed that the collective bargaining process was working, and they saw no reason to change the existing structure. These officials believed that negotiation results showed that TVA's labor has kept pace with gains made by organized labor elsewhere.

These officials said that the unions had certain advantages that they would not have if TVA were subject to federal labor relations laws, such as (1) a broader scope of collective bargaining than most federal agencies and (2) TVA's preference of union membership when making certain personnel decisions. They believed that the goal of some of the larger unions in seeking coverage under NLRA was to gain control over the representation of TVA employees who are now represented by smaller unions.

TVA management officials also said that certain provisions of the TVA act worked to the advantage of the Panel and Council and to TVA management's disadvantage. The Vice President for Human Resources said, for example, that TVA cannot ask for a wage concession to remain competitive. The TVA act requires that wage rates for blue-collar employees be adjusted on the basis of prevailing rates. The Vice President also said that the unions believed they got more if they submitted matters to an arbitrator and that, if binding arbitration were available to the unions, the unions would be less likely to reach agreement during negotiations. He was also concerned that arbitrators might make decisions that TVA would not find financially acceptable.

TVA management officials also emphasized their efforts to work through cooperative committees, composed of local management officials, blue-collar union representatives, and employees, to solve problems of mutual concern. They said TVA was also trying to work with both the Panel and Council to implement a total quality management program,

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with the idea of making TVA the most competitive electric utility in North America and the most productive and effective agency in the federal government.



# Recent TVA Negotiations Have Sometimes Resulted in Deadlocks and Litigation

Our review of records of negotiations held between TVA and the Panel and Council showed that the negotiations have become protracted and contentious. For the years we reviewed, mediators, arbitrators, the Department of Labor, Congress, and the courts have all been requested to intervene and resolve disputes between TVA and the two labor organizations.

## Negotiations Have Become More Difficult

TVA management officials, as well as Panel and Council officials, said that negotiations and the resolution of disputes were more difficult now than in earlier years and required more time. This difficulty in reaching agreements is indicated by the increased time required for completing the negotiations. Although the 1989 TVA-Panel negotiations took just over a week (from August 28 to September 1, 1989, and September 18 to September 22, 1989), the 1989 TVA-Council negotiations took much longer. These negotiations continued from December 1989 to May 1990, when they were recessed and scheduled to resume after a 2-week break. By October 1990, negotiations were still not completed. At that point, TVA and the Council reached an understanding that all proposals being negotiated would be dropped.

Although the negotiations have taken longer, records showed that TVA and the Panel and Council reached agreement during negotiations on some proposals in 1988, 1989, and 1990. However, the negotiations failed to produce agreements on other proposals. As discussed below, the parties turned to outside help, including Congress and Labor, to resolve negotiation deadlocks.

## Panel Negotiations Resulted in Some Disputes and Impasses

TVA and the Panel negotiated proposals for new salary rates in 1988, 1989, and 1990. According to Panel officials, in 1988 Members of Congress were asked to intervene, and in the other 2 years, mediators assisted.

Panel officials said that, during the 1988 negotiations, TVA and the Panel agreed on rate increases of about 2 percent for two of the seven schedules covering white-collar employees but did not agree on rates for the other five schedules. These officials said that TVA had proposed no increases for the five salary schedules in dispute during the 1988 negotiations. According to the officials, because TVA would not negotiate salary rate increases for the five schedules in 1988, the Panel had no reasonable recourse but to petition Congress for a change in TVA's position. Panel officials said they discussed the matter with several Members,

and TVA subsequently agreed to approximately a 2-percent raise for these five pay schedules.

During the 1989 negotiations, TVA and the Panel agreed on rates for two of the seven salary schedules but disagreed on the remaining five. The Panel requested, and TVA agreed, to submit the five schedules in dispute to mediation. During mediation, TVA and the Panel agreed on rates for four schedules but continued to disagree on the remaining one. For this one, TVA implemented the final offer it made during negotiations.

The 1990 negotiations resulted in agreement between TVA and the Panel on four schedules but not the other three. TVA and the Panel agreed to submit the dispute over these three schedules to mediation, and they agreed on rates for the three schedules during mediation.

Along with salary proposals, TVA and the Panel considered proposals on fringe benefits and other nonsalary matters during negotiations. For example, during negotiations held in August and September 1989, TVA and the Panel considered 60 nonsalary proposals. Although 22 of the 60 proposals were accepted, most were withdrawn, as table 3.1 shows.

**Table 3.1: Status of Proposals Made by TVA and Panel During 1989 Negotiations, as of September 1990**

<b>Status</b>	<b>TVA proposals</b>	<b>Panel proposals</b>	<b>Total</b>
Accepted	9 <sup>a</sup>	13	22
Withdrawn	7	26	33
Open	0	5	5
<b>Total</b>	<b>16</b>	<b>44</b>	<b>60</b>

<sup>a</sup>This number includes two TVA proposals referred to a joint committee.

TVA and the Panel either accepted or withdrew all but five proposals during negotiation or mediation. These five proposals were all made by the Panel, and all remained open because TVA did not agree with the Panel's request that proposals be referred to mediation. Two of the proposals dealt with bargaining provisions in the Articles of Agreement, and the other three involved substantive matters directly affecting white-collar employees.

In one of the five proposals, the Panel wanted TVA to eliminate seven provisions in the agreement limiting the matters subject to negotiation and arbitration. These provisions were added in 1984, and six of them listed six specific matters that TVA would not negotiate, such as decisions

on whether to use TVA employees or contract employees and fringe benefits, such as annual and sick leave, holidays, travel, and retirement. A seventh provision eliminated from negotiation and arbitration "every other matter not explicitly covered in these Articles of Agreement, including supplementary agreements."

Another of the five Panel proposals was that TVA revise the agreement to provide final and binding arbitration for nonpay disputes. The agreement provided that the opinion of the arbitrator in such disputes was advisory and that TVA and the Panel could accept or reject the opinion within 30 days. The Panel's other three proposals were that TVA (1) establish an agency shop requiring all employees covered by the agreement to be members of the union and thus subject to payroll deductions for dues and fees; (2) provide a TVA-sponsored child care center; and (3) establish a flexible benefits plan providing employees with several choices of medical plans, life insurance, etc. The negotiation records showed that TVA refused to mediate all five of the Panel's proposals because the matters in dispute were not subject to negotiation and thus were not subject to dispute resolution procedures, including arbitration.

According to Panel officials, they have not submitted disputes to arbitration in recent years because TVA would not accept earlier arbitrators' decisions. They cited as evidence an arbitrator's decision, which follows, on the policy of granting additional seniority for employees on the basis of their performance appraisals when making reduction-in-force decisions. In this case, TVA disagreed with both the Panel and the Council on the applicability of regulations issued by OPM and refused to submit the matter to arbitration. A lengthy dispute ensued, and one outcome was that TVA refused to later use the arbitrator who had ruled in favor of the Council because TVA did not believe the arbitrator to be impartial. (See app. II.)

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### **Council Negotiations Resulted in Some Appeals and Litigation**

TVA and the Council also held negotiations during 1988, 1989, and 1990. Following the 1988 negotiations, in February and March 1989, 4 of the 15 unions comprising the Council notified the Department of Labor of their intent to appeal some of TVA's final wage proposals to Labor as provided for in the TVA act. By April 1991, Labor had made a decision on only one of the appeals filed by the four unions. In this one decision, made in December 1990, Labor determined that rates higher than the final rates offered by TVA for 7 of the 10 positions affected should have been implemented. For the three remaining positions, Labor determined

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that TVA's final rates were appropriate for two positions and higher than appropriate for the third position.

Under the General Agreement, TVA was to implement its final rates effective the beginning of the payroll period nearest January 1 following the beginning of negotiations. As of April 1991, a TVA official said TVA was retroactively adjusting rates put into effect about January 1, 1989, as a result of Labor's December 1990 decision.

During the next negotiations between TVA and the Council, which began in December 1989, two unions notified Labor of their intent to appeal TVA's wage proposals to Labor. However, TVA advised Labor that negotiations had not been completed. According to Labor officials, as of April 1991, Labor had not processed the appeals.

In addition to wage proposals, TVA and the Council considered various other proposals during the 1988, 1989, and 1990 negotiations. For example, during the negotiations that began in December 1989, TVA and the Council considered a total of 150 nonwage proposals, most of which were either withdrawn or remained open as of September 1990. (See table 3.2.)

**Table 3.2: Status of Proposals Made by TVA and Council During 1989 Negotiations, as of September 1990**

Status	TVA proposals	Council proposals	Total
Accepted	15	17	32
Withdrawn	23	61	84
Open	9	25	34
<b>Total</b>	<b>47</b>	<b>103</b>	<b>150</b>

As stated previously, the 1989 negotiations initially ran from December 1989 to May 1990. In October 1990, the TVA Manager of Labor Relations and the Administrator for the Council signed an agreement to conclude the 1989 negotiations. The two individuals agreed that all agreements between TVA and the Council, including all changes accepted at that time, would remain in effect for 1 year, with the exception that new wage rates could be negotiated as provided in the General Agreements. They agreed that all open proposals would be withdrawn by both parties without prejudice.

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**Council Has Increasingly  
Appealed TVA Wage Offers  
to Labor**

The TVA act allows unions representing TVA's blue-collar workers to appeal wage offers to the Secretary of Labor. Unions representing white-collar employees do not have similar appeals rights. Department of Labor officials provided data showing that TVA's blue-collar unions appealed wage offers more often in the 1980s than in some earlier years. Specifically, the unions filed appeals in only 5 out of the 15 calendar years 1966 through 1980. In contrast, they appealed to Labor in 9 of the 10 calendar years 1981 through 1990.

Although the blue-collar unions' right of appeal to Labor provides for independent review and resolution of wage disputes, the information we gathered showed that this resolution process was not working very well. According to Labor, when its Wage and Hour Division receives a notice of intent to appeal, that division acknowledges the notice, advises TVA of the notice, and requests that both parties submit all pertinent wage data within a specified time period. Labor's policy is to not make its own wage surveys and to consider only the data submitted by both parties.

According to Labor officials responsible for reviewing the appeals, there are no criteria or guidance available for Labor's wage determinations except for a few sentences in the TVA act. These officials said that wage rate appeals submitted under the TVA act were unlike the wage determinations that Labor made under other statutes, which provided more specific criteria for setting wage rates.

In addition, Labor's reviews and decisions on wage appeals had been delayed by the large volumes of wage data to be reviewed and the limited staff assigned to the reviews. After the 1989 wage negotiations between TVA and the Council, a total of four unions filed notices in February and March 1990 of their intent to appeal TVA's wage offers to Labor, according to a chronology of actions on the appeals provided by Labor's Wage and Hour Division.

After filing a notice, one of these four unions had not supplied supporting documentation as of October 1990, when we did our work at Labor. At that time, the Labor official directly responsible for reviewing the appeals was uncertain whether the appeal was still active and had not asked the union whether it planned to pursue its appeal. This official said that his group was reviewing appeals filed by only one union and that he assigned this appeal to an employee for review only after the union inquired about its status.

As of April 1991, when we updated the status of the appeals, Labor told us that it had made a decision on one union's appeal (in December 1990) and had not made decisions on the other two unions' appeals. The fourth union still had not at that time supplied supporting documentation. Subsequently, in commenting on a draft of this report in July 1991, Labor said it had not made decisions on the appeals filed by two unions—more than 2-1/2 years after the unions notified Labor of their intent to appeal. Labor said the parties to one of the disputes had not submitted all of the required data. Labor said that it required all information submitted to be shared with all interested parties, and this had contributed to the lengthy process.

Labor officials said that one appeal decided in December 1990 required a review of substantial volumes of documents provided by both TVA and the union. Labor had only one employee assigned, on a part-time basis, to review the appeals.

Along with (1) the lack of criteria and guidance for deciding appeals and (2) the large volumes of data to be reviewed, TVA and one union have disagreed on the process for submitting appeals to Labor since as early as 1984. This union, which represented the largest number of TVA's blue-collar employees, filed appeals with Labor during 7 of the 10 calendar years 1981 through 1990. TVA correspondence shows that in 1984 this union recommended to TVA that, to improve the appeals process, oral arguments be made in a hearing before Labor officials. TVA disagreed, however.

In April 1989, this same union proposed new procedures to Labor on when appeals should be filed with Labor and when information should be exchanged between the union and TVA. TVA wrote to Labor in May 1989 disagreeing with the union's proposal. Labor responded to both TVA and the union in October 1989 on the timing of both submissions to Labor and the exchange of information between TVA and the union.

However, TVA and the union still disagreed on procedures for filing appeals with Labor. This same union and one other union filed appeals with Labor in early 1990. As discussed earlier, Labor did not process the appeals because TVA said that negotiations had not been completed.

## Litigation Used to Require Mediation and Arbitration for Some Disputes

TVA, the Panel, and the Council have all turned to the courts to settle some of their disputes in recent years. TVA's Office of General Counsel provided data showing that a total of 16 court cases involving disputes between TVA and the Panel or the Council had been closed or were in process during the period from January 1, 1987, to October 11, 1990. (See app. II.)

Of the 16 cases, 13 involved disputes over the use of mediation and arbitration. In 11 of these 13 disputes, the Panel and Council requested that TVA be required to either refer disputes to mediation and arbitration or accept the decisions that arbitrators already had made. For example, after the 1988 negotiations between TVA and the Council, the Council filed suit in court in September 1989 to require that TVA mediate three Council proposals. The Council proposed that TVA (1) discontinue its practice of requesting employees by name from union hiring halls (a mechanism used by the union to furnish employees to TVA on request), (2) fund retirement benefits on the basis of the employee's total annual TVA income rather than on the base rate of pay, and (3) fund retirees' medical and dental insurance. TVA's position on the three proposals was that TVA had not explicitly agreed to negotiate these matters and the General Agreement did not permit the matters to be mediated.

Another matter, mentioned previously, that created a lengthy dispute, including litigation, was TVA's notification in November 1986 of plans to implement a policy for reduction-in-force decisions of granting credit for seniority to employees on the basis of their performance. Both the Panel and the Council requested that the proposed policy be submitted to arbitration. TVA officials did not agree because they said TVA was required by OPM regulations to implement the policy.

Over the next 4 years, the issue was debated in the courts and before an arbitrator, with no decisions made that were acceptable to all the parties. The intensity and duration of the disagreement are indicated by some of the actions and counteractions in the TVA-Council debate highlighted below.

- In March 1987, the Council filed a petition in a U.S. district court for an order compelling TVA to arbitrate the credit-for-performance issue.
- In July 1987, the court granted a Council petition to compel arbitration of the issue, and TVA moved that the court amend the order. The court denied TVA's motion in September 1987.

- TVA notified the arbitrator in July 1988 that the case was being placed in abeyance. Bills were introduced in the Senate and House in June and July 1988 to address the issue.
- About 1 year later, in July 1989, the Council notified TVA that the Council was ready to proceed with arbitration. An arbitration hearing was held in November 1989. At that hearing, TVA argued that the credit-for-performance matter was not subject to arbitration. In his opinion and award, dated in April 1990, the arbitrator ruled that the credit-for-performance matter was subject to arbitration. In addition, the arbitrator ruled that TVA (1) immediately cease and desist its use of credit for performance, (2) remove past credit for performance from the records of all affected employees, and (3) reinstate all employees subject to reduction-in-force actions as a result of credit for performance.
- Subsequently, TVA refused to use the arbitrator making the April 1990 award on credit for performance after his contract expired. In June 1990, the Council filed a suit in court on TVA's refusal to use the arbitrator, and TVA's counterclaim was that the arbitrator was not impartial in the credit-for-performance award. As of October 1990, this case involving the arbitrator remained open.

As the TVA-Council debate proceeded, TVA and the Panel also continued to disagree and were in court several times over the credit-for-performance issue. In 1989, a court of appeals ruled that the applicability of the credit-for-performance rule to TVA was not subject to arbitration. Between June 1988 and April 1990, four bills were introduced in Congress to exempt TVA from any regulations that considered employee efficiency or performance ratings when determining which employees to retain in a reduction in force. None of these three bills were enacted into law.

In November 1990, TVA labor relations officials said that TVA and the Panel and Council did agree to a credit-for-service policy, even though a final decision was not made on whether TVA was required to implement the OPM regulation. According to TVA officials, the policy agreed upon allows TVA to grant up to 10 years' credit for seniority to employees on the basis of their performance ratings, rather than up to 16 years as TVA had proposed. However, the issue remained, and another bill (H.R. 2285) was introduced in May 1991 to address the credit-for-performance issue.



# TVA Collective Bargaining Excludes Some Basic Employee Rights and Protections

TVA's collective bargaining arrangement differs in some fundamental ways from the federal labor relations standards that apply to most organizations in both the private sector and federal government. Specifically, its bargaining structure excludes some employee rights and protections, such as administrative mechanisms for ensuring fairness in negotiation and resolving negotiation disputes, that apply to most other organizations.

## TVA Bargaining Framework Differs From That Applicable to Most Other Organizations

Because of its unique status, TVA's bargaining policy and agreements do not incorporate the rules and requirements applicable to most private and federal organizations. TVA's policy on collective bargaining, first established in 1934, is basically a recognition by TVA of the right of its employees to organize and bargain collectively. The policy does not limit the matters that may be bargained and does not provide any of the procedures for negotiation and dispute resolution.

The framework of TVA's relations, including negotiation and dispute resolution rules, has been negotiated by TVA and the labor organizations. The agreements say that TVA's relationships with the labor organizations are established under section 3 of the TVA act by the agreements made by the parties and by the history of their relationships. TVA's agreements include the following provision to explicitly recognize that other principles do not apply:

"The parties agree that the unique foundations of this relationship shall be considered in interpreting this bilateral agreement rather than the principles developed for regulated labor relations arrangements."

Because of the unique foundation of TVA's labor relations, its bargaining policy and agreements exclude some of the basic labor relations provisions that by law give the parties certain rights and protections. These rights and protections are granted to employees in the private sector by NLRA and in legislation creating USPS. The rights are also granted to employees in most federal organizations under CSRA (title VII). As discussed in the next section, TVA's differences from these organizations essentially involve (1) the collective bargaining rights of the parties involved and (2) the mechanisms available for resolving negotiation disputes.

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## TVA Employees' Bargaining Rights Have Been Largely Negotiated

TVA's negotiation with labor organizations of employee bargaining rights and procedures represents a fundamental difference between TVA and most other organizations that engage in collective bargaining. NLRA and CSRA establish and protect the right of employers, employees, and labor organizations to bargain collectively. NLRB and FLRA were created by those acts, respectively, and given the responsibility of administering and enforcing provisions of the acts.

As previously stated, Panel and Council officials believed that the absence of any statutory requirement for TVA to bargain puts the labor organizations at a disadvantage during negotiations. They believed that this disadvantage existed because management could unilaterally decide (1) whether to engage in collective bargaining and (2) what procedures the parties would follow for negotiations and resolution of most disputes.

Although TVA has granted in policy the right of employees to join a union, that policy differs from provisions of NLRA and CSRA on union membership. Both of these laws are neutral on preferences for employees to join or not join a union, subject to certain provisions in NLRA on the union-security agreement.<sup>1</sup> In contrast, TVA's policy is to encourage union membership.

TVA's union-preference policy on selection of white-collar employees was successfully challenged in a court suit brought against TVA and the Panel in 1984.<sup>2</sup> Subsequently, TVA revised the Supplementary Agreement 5, General Provisions for Selection, of the Articles of Agreement to eliminate provisions stating that union membership and participation were positive factors in selecting employees for promotions and transfers. However, TVA's policy on relations with employee organizations continued to state that TVA encourages employees represented by unions to become and remain union members. In addition, TVA's agreements with the Council continued to include union-preference provisions stating that union membership is a positive factor "...within the limits permitted by applicable laws and federal regulations in appraising relative merit and efficiency in selection for appointment."

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<sup>1</sup>NLRA permits, under certain conditions, a union and an employer to make an agreement (called a union-security agreement) requiring all employees to become members of the union in order to retain their jobs.

<sup>2</sup>*Bowman v. Tennessee Valley Authority and Salary Policy Employee Panel*, 744 F.2d 1207 (6th Cir., 1984).

TVA's policy on union preference was addressed in an August 1989 report of the Merit Systems Protection Board (MSPB).<sup>3</sup> MSPB described aspects of TVA's merit system, compared and contrasted these aspects with those used by most other federal agencies, and assessed how well TVA met the requirements of the underlying merit principles. Although MSPB found positive aspects in the TVA system, MSPB recommended that TVA amend its policy on union preference in selection for blue-collar appointments to ensure that union membership did not influence the selections. MSPB said that the TVA policy appeared to conflict with statutory merit principles. TVA disagreed with the MSPB recommendation and did not change the agreements because TVA believed that its policy was consistent with the TVA act and merit principles guidelines.

From the information we obtained, it is not clear whether TVA's policy and agreements on union preference comply with federal merit system principles. TVA's compliance with these principles was beyond the scope of our labor-relations review, and we plan to pursue this matter separately.

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**Agreements Do Not  
Provide for Union  
Representatives to Be  
Elected by TVA Employees**

TVA's labor relations policy encouraged employees to become and remain members of unions recognized by TVA as the exclusive representatives of employees in defined bargaining units. However, neither the policy nor the agreements negotiated with the Panel and Council provided specific procedures for choosing representatives. NLRA and CSRA spell out the procedures to be followed for selecting representatives. These procedures require the use of secret ballots and the conduct or supervision of elections by NLRB and FLRA.

Under the Panel agreement, a union proposing to represent a bargaining unit must submit a request to the TVA manager of labor relations. The agreement required that the request include evidence that a majority of employees in the unit wished to have that union represent them. However, the agreement did not provide procedures for TVA employees to elect their union representatives by secret ballot under the supervision of an independent, third party.

The Council agreements with TVA and Council bylaws adopted in February 1981 also did not provide procedures for direct employee involvement in selecting those union representatives who bargained with

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<sup>3</sup>The Tennessee Valley Authority and the Merit Principles, Merit Systems Protection Board, Aug. 17, 1989.

management. Rather, in collective bargaining, TVA blue-collar employees were represented by Council members who, according to the Council Administrator, were appointed by international unions of AFL-CIO. According to the Council Administrator, local unions represent TVA employees and employees from other organizations working in a particular craft (e.g., electricians, pipefitters, and machinists) in a particular geographic area. These employees elect local union officers, including a president and business agent. These local officers are not members of the Council and cannot participate in wage conferences held by TVA and the Council but may attend such conferences.

We earlier reported to Congress our concerns about whether TVA employees had sufficient control over their designated union representatives and whether the situation existing at that time had diminished employee participation in and control over their collective bargaining process.<sup>4</sup> We said that the more than 200 local unions with TVA employee membership were represented on the Council solely through the international unions with which the local unions were affiliated. We said the local union representatives had no voice in selecting international union representatives. We recommended that the TVA board, to the extent feasible in its capacity as an employer and as a party to the negotiated agreements, take measures to enhance employee influence over the bargaining process. TVA strongly disagreed with our report, challenged the basis for our conclusions, and declined to implement our recommendation.

In August 1980, we reported to Congress that our follow-up work at TVA indicated no change in the labor-relations situation at TVA.<sup>5</sup> TVA's position on the recommendation we made in 1978 and repeated in 1980 remained essentially unchanged. In both reports, we recommended that Congress include TVA employees under the statutory labor-relations procedures applicable to private or other federal employees.

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### Some TVA Working Conditions Excluded From Bargaining

Although TVA's collective bargaining policy does not limit the matters TVA will bargain, the agreements negotiated with the Panel and the Council gave TVA the right to decide what would be subject to, and excluded from, the scope of bargaining. TVA's agreement with the Panel

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<sup>4</sup>Additional Safeguards Needed for Tennessee Valley Authority Trades and Labor Employees to Protect Their Interests in Collective Bargaining (FPCD-78-12, Mar. 15, 1978).

<sup>5</sup>Triennial Assessment of the Tennessee Valley Authority—Fiscal Years 1977-1979 (EMD-80-91, Aug. 13, 1980).

was revised in 1984 to delineate between matters that TVA would and would not negotiate with the Panel. TVA agreed to negotiate some matters, such as rates of pay, job classification procedures, and work schedules. TVA did not agree to negotiate some other matters, such as decisions on whether to use contract or TVA employees, designation of positions as management, and annual and sick leave. In addition, under the Articles of Agreement, none of the provisions included in the articles on the scope of bargaining were subject to arbitration.

The Council agreements did not list specific matters as negotiable and nonnegotiable. However, in all Council agreements as well as the Panel agreement, TVA stated that by signing the agreements it was agreeing to negotiate only those matters explicitly covered by the agreements.

These limitations differ from provisions of NLRA because NLRA does not limit employee working conditions that are subject to collective bargaining. Rather, NLRA makes it illegal for an employer to refuse to bargain in good faith about wages, hours, and other "mandatory subjects of bargaining." Under NLRA, some managerial decisions such as subcontracting and relocation may be mandatory, depending on the employer's reasons for taking the action. On nonmandatory subjects, the parties are free to bargain and agree under NLRA, but neither party may insist on bargaining on such subjects if the other party objects.

Although TVA's agreements limited the scope of bargaining, the agreements still covered matters, such as pay for white-collar and blue-collar employees, that federal agencies are generally precluded by CSRA from bargaining. Because CSRA restricts matters determined by federal law from bargaining, most federal agencies are not permitted to bargain with labor organizations for wages and related benefits, such as retirement and leave coverage. Some agencies, such as the Bonneville Power Administration and the Government Printing Office, that bargained for pay and fringe benefits before 1978 were allowed to continue to do so.

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### TVA Does Not Have Access to Statutory Dispute Resolution Mechanisms

Because of TVA's exemption from federal labor laws, its employees and their representatives do not have access to some administrative mechanisms for resolving disputes that are available by statute to most federal agencies. TVA's agreements provided for mediation and arbitration to resolve disputes, except those disputes involving wage rates that may be appealed to the Department of Labor under the TVA act. As discussed previously, Panel and Council officials did not believe that the arbitration procedures were fair to all the parties. In addition, Labor officials

said they were having difficulty resolving blue-collar wage disputes because of the absence of specific criteria in the TVA act for determining appropriate wage rates.

NLRA and CSRA provide mechanisms for resolving negotiation disputes. Both acts provide that parties to collective bargaining may request FMCS services to help resolve negotiation disputes. Unlike CSRA, NLRA provides the right of covered employees to strike. This right is recognized as an important means of encouraging the parties to reach agreement and resolve negotiation disputes. As discussed later, although USPS is covered by NLRA, postal employees are prohibited by law from striking. In lieu of the right to strike, Congress provided postal employees with the right to binding arbitration to resolve negotiation deadlocks.

Although federal employees covered by CSRA are prohibited from striking, CSRA provides certain administrative mechanisms for resolving disputes. Parties to collective bargaining who are covered by CSRA may obtain assistance from FLRA, FMCS, and FSIP to resolve negotiation disputes and impasses. FLRA is responsible for (1) resolving negotiability disputes referred by labor organizations and (2) reviewing arbitration awards. FMCS serves as a mechanism available to either party for mediating disputes. FSIP is responsible for resolving impasses that cannot be resolved through negotiation and mediation.

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### TVA Labor Practices Are Not Subject to NLRB or FLRA Oversight and Enforcement

Unlike most other private and federal organizations, TVA's collective bargaining is not subject to NLRB or FLRA oversight and enforcement to protect against unfair labor practices. Both NLRA and CSRA prohibit unfair labor practices by employers and labor organizations, such as the interference by either in employees' right to decide whether to join or not join a union or the failure of either to bargain in good faith.

NLRB and FLRA are responsible for investigating charges of unfair labor practices and have enforcement authority. For example, FLRA can (1) issue a cease and desist order, (2) require the parties to renegotiate agreements and require them to be effective retroactively, (3) require reinstatement of employees with back pay, or (4) any combination of the above.

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## Agreements Provided for Termination but Not Renegotiation

TVA's agreements included provisions for amending and terminating the agreements, with proper notice by either management or the Panel and Council. However, the TVA policy and agreements did not include procedures for renegotiating agreements should they be terminated. This is different from both NLRA and CSRA. NLRA provides that, when agreements are terminated, the parties are to begin good faith bargaining to establish a new agreement. For example, NLRA sets the following requirements that a party to a labor agreement must follow to terminate and renegotiate an agreement:

- notify the other party in writing 60 days before termination is to take place,
- offer to meet and confer about negotiating a new contract,
- notify FMCS if terms of a new agreement have not been settled by that time, and
- continue observing terms and conditions of the existing contract without a strike or lockout until the notice period expires.

Although CSRA does not include similar requirements for terminating and renegotiating agreements, the act does provide avenues for resolving impasses that may arise when agreements are at issue, including access to FSIP. FSIP is authorized to take whatever action is necessary to resolve impasses, consistent with CSRA.

# TVA's Collective Bargaining Issues Could Be Addressed Through a Cooperative Approach or Legislative Changes

We looked at two broad alternatives for approaching the current TVA labor-management situation. One alternative is for TVA and the unions to take the initiative in working with all the parties concerned to address the collective bargaining issues. The other is for Congress to change one or more of several existing laws to provide TVA management and employees with certain statutory bargaining rights and protections.

## Alternative I: TVA and Unions Could Initiate Cooperative Approach to Improve Collective Bargaining

One alternative for addressing the issues at TVA would be for all the parties to work together to improve collective bargaining under existing TVA authority. This approach would also have to include Labor because of its dispute resolution role under the TVA act. TVA and the unions may also need outside assistance in working through the issues. For example, Labor or FMCS could assist the parties in framing the issues to be addressed and reaching agreement.

In this cooperative approach, TVA management and the unions need to recognize TVA's unique bargaining situation. Because of the exemption, TVA employees and the unions representing these employees have not had the rights and protections that most other employees and unions have. From 1935 to the present, TVA's policy has been to encourage collective bargaining. The approach has been to allow the parties to work out mutually acceptable rules and procedures for negotiation. Few formal rules have been imposed on the parties to the collective bargaining. Rather, they have bargained on the basis of trust and cooperation.

To be successful, this approach requires a unity of purpose and mutual understanding among all the parties involved. According to Panel and Council officials, this unity of purpose and cooperation does not exist today to the degree it did in TVA's earlier years. The evidence we gathered indicated that the change in TVA's economic situation had contributed to reduced labor-management cooperation. The unions need to recognize this change and the related challenges that TVA faces of becoming more competitive, reducing costs, and stabilizing interest rates.

Amendments to bargaining agreements indicated that under the cooperative approach the Panel and Council had lost some of their bargaining power since the 1978 exemption. They found it more difficult to negotiate and obtain management's agreement on their basic bargaining rights. In addition, the bargaining structure provided limited dispute resolution avenues when the parties were unable to agree. Basically,



Panel and Council officials representing most of TVA's employees indicated that this approach and the resulting negotiation and dispute resolution procedures were no longer acceptable.

Because the parties have not negotiated mutually acceptable rules, TVA's board of directors could take the initiative of bringing all the parties together to improve the collective bargaining structure and process. In doing so, we believe that TVA and the unions would need to focus on developing (1) procedures for bargaining that increase participation of TVA employees and their representatives and (2) additional mechanisms that the parties can use for resolving disputes. Some provisions of federal labor relations laws, discussed earlier, provide a basis for TVA and the unions to determine what specific changes could be made.

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### **Cooperative Approach May Require Third-Party Assistance**

Third-party assistance may be required for a cooperative approach to be successful for all the parties. We discussed with TVA management and Panel and Council officials this approach and the use of Labor or another party, such as FMCS. Although Labor officials said they were willing to assist if the parties requested assistance, TVA management did not believe the situation required outside assistance. According to TVA's Vice President for Human Resources, TVA was making progress in improving relations with the Panel and Council, and he did not believe there was a need to change the existing bargaining structure.

Panel and Council officials also did not believe assistance from Labor would be helpful. The Panel Chairperson did not believe the bargaining situation could be improved without a legislative change to give the unions bargaining rights like those granted to most other organizations. She said the history of the Panel's negotiations with TVA management indicated that management cannot be trusted to negotiate and follow rules that are fair to all the parties.

The Council Administrator said the Council's relations with TVA management had improved in the recent past. He did not believe outside assistance was required. The Administrator said that the Council is not entirely satisfied with the current situation but believed that things could be worse if the exemption were replaced with a federal law governing TVA's collective bargaining. He said that the Council's official position was that it did not favor a legislative change placing TVA under NLRA. He said, however, that the view was not shared by all Council members and that those members representing the majority of TVA's blue-collar employees believed a legislative change was necessary.

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## Alternative II: Congress Could Establish Bargaining Rights for TVA

If the voluntary approach of cooperation among the parties proves to be unworkable, Congress could consider providing statutory rights and protections for the parties to TVA's collective bargaining similar to those applicable to most private and federal organizations.

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## Alternative II-A: NLRA Coverage

As one legislative approach, Congress could consider applying certain NLRA provisions to TVA. Unlike CSRA, NLRA does not restrict the scope of bargaining, and TVA management and the unions would continue to be relatively free under NLRA to determine, within the parameters of other applicable laws, those matters to be bargained. A key difference, however, would be that all the parties to the collective bargaining would have to recognize the rights and obligations of collective bargaining imposed by NLRA. Currently, TVA management and the unions negotiate these rights and obligations. The USPS model, in which collective bargaining is governed by certain provisions of NLRA, would also provide a mechanism for resolving negotiation disputes, i.e., statutorily based arbitration procedures, that TVA and the unions do not now have available.

Although Congress initially applied NLRA to private-sector organizations, Congress extended certain provisions of NLRA to USPS in 1970. As discussed in the following section, in so doing, Congress provided a new concept in government labor relations.

## USPS Collective Bargaining Arrangement

The Postal Reorganization Act, approved in August 1970, brought postal labor relations within a structure similar to that applicable to nationwide enterprises in the private sector. It gave USPS employees the statutory right to organize and bargain collectively on all matters, such as wages and hours, that organizations in the private sector were able to bargain for.

According to the act's legislative history, Congress recognized that the right to strike was an important element of labor relations in the private sector. However, Congress decided that USPS was too important to the people and the economy of the nation for Congress to tolerate strikes. In addition, the legislative history showed that Congress viewed collective bargaining in public employment, including the role of strikes and their impact on public welfare, as different from that found in the private sector. Strikes had been prohibited in the federal service, and Congress continued to prohibit USPS employees from striking.

Because of the provision banning strikes, Congress provided for binding arbitration in the 1970 Postal Reorganization Act as a means to resolve collective bargaining impasses. The act's legislative history showed that the arbitration provisions were added to ensure "parity of bargaining power" between labor and management. However, the legislative history showed that Congress expected the parties to collective bargaining to make "every reasonable possibility of reaching bilateral agreement" before obtaining an imposed resolution from outside arbitrators.

The 1970 act included specific procedures to be followed by USPS and labor organizations for dispute resolution, including arbitration and the following:

- Collective bargaining agreements, which are to be effective for not less than 2 years, may not be terminated or modified by either party without first giving the other party 90 days' written notice. If a dispute exists and no agreement has been reached within 45 days of the notice, the party serving the notice is to notify FMCS.
- The Director of FMCS is to convene a fact-finding panel if (1) no agreement has been reached and (2) the parties have not otherwise arranged for binding arbitration by the expiration of the agreement or the date of the proposed termination or modification. The Director of FMCS is to follow procedures prescribed in the act for selecting panel members and meet a time limit (45 days) in the act for a report from the panel.
- If no agreement is reached within 90 days after the agreement is terminated or modified, or if the parties agree to arrange for binding arbitration but do not agree on related procedures, an arbitration board is to be established. The act includes procedures for selecting members of the arbitration board and framing the issues to be decided by the board.
- The arbitration board is to render a decision within 45 days after the board's appointment, and the decision is conclusive and binding upon the parties.

The above provisions applied when an existing agreement was to be terminated or modified. The act also provided procedures and time limits, including procedures for the establishment of an arbitration board, to be followed when a dispute or impasse arises in the establishment of an agreement.

### **USPS' Experience With Arbitration**

USPS' Director of Contract Administration, Labor Relations Department, said that management and unions representing USPS employees have had mixed results in their attempts to reach agreements without the use of binding arbitration. He said that between 1971 and 1989, USPS and the

unions negotiated new agreements with the following results: in 1975 and 1987, agreements were negotiated with all unions without the use of arbitration; in 1978 and 1981, agreements were negotiated with some unions without the use of arbitration, but arbitration was required after negotiations with other unions in both years; in 1984, the negotiation of agreements with all unions resulted in the use of arbitration.

According to this official, the most recent USPS negotiations began in August 1990, and USPS and some unions reached agreements during negotiations. He said that impasses resulted during negotiations with other unions, and the parties to the negotiations referred the matters in dispute to arbitration.

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### **Timeliness of NLRB Case Processing to Be Improved**

Because of congressional concerns about NLRB's case processing, we reviewed the length of time taken to decide some cases appealed to the five-member board from NLRB's regional offices.<sup>1</sup> As a result of our recommendations on that review, NLRB responded with a number of actions, including the addition of a new component to its case management system, which would improve the timeliness of case processing.

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### **Alternative II-B: CSRA Coverage**

A second legislative alternative would be coverage of TVA under CSRA. This would require an amendment to title VII of CSRA, making TVA subject to the regulatory oversight of FLRA and its General Counsel. On the basis of views expressed by those experienced with title VII provisions, we believe there are significant drawbacks to this alternative for TVA, such as a reduced scope of bargaining compared with both TVA's current bargaining arrangement and that permitted under NLRA, as discussed in the following section.

### **Concerns Exist About Title VII Provisions**

Testimony provided in congressional hearings in 1988 indicated widespread dissatisfaction by both labor and management with experiences under title VII. Certain Members of Congress, an OPM official, and labor organizations all expressed concern about aspects of title VII. According to statements presented at the hearings, Members of Congress and representatives of labor organizations were particularly concerned about the limited scope of bargaining permitted under title VII. Other concerns surfaced in those hearings regarding the number of labor-management disputes that continued to exist after passage of CSRA, and FLRA's slow

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<sup>1</sup>National Labor Relations Board: Action Needed To Improve Case-Processing Time at Headquarters (GAO/HRD-91-29, Jan. 7, 1991).

rate of processing negotiation disputes. Our recent work on title VII showed that concerns about title VII and FLRA's administration of the title continued to exist in 1990.<sup>2</sup>

Under title VII, labor and management may only bargain those matters not covered by federal statutes, thus eliminating in most agencies the right to bargain for pay and related benefits. They may not bargain matters that are covered by federal regulations. Further, title VII specifically excludes other matters from bargaining that are defined as "management rights." Although TVA is subject to certain federal civil service laws and regulations and has included certain management rights in its bargaining agreements, application of title VII to TVA would statutorily limit its scope of bargaining.

In 1985 and 1986, we reported that the timeliness of FLRA's decisions had been affected by the lack of a third member appointed and confirmed to serve on FLRA.<sup>3</sup> For example, in August 1985, we reported that about one-fourth of FLRA's caseload was delayed because only two of the three positions were filled, resulting in tie votes on some cases.

In February 1991, an FLRA official told us that, subsequent to our 1986 report, the timeliness of case processing was further affected by the absence of two confirmed FLRA members. According to this official, the number of cases of all types awaiting processing more than doubled between the end of fiscal years 1988 and 1989. He said that two of the three positions were vacant during the period from November 1, 1988, through November 30, 1989, during which time FLRA made no decisions. The FLRA official said that all three positions had since been filled, and FLRA began issuing decisions again in January 1990.

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### Alternative II-C: Specific Legislation for TVA's Unique Bargaining Situation

A third legislative alternative would be for Congress to establish a collective bargaining structure designed specifically for TVA. This alternative would recognize TVA's unique bargaining situation and has been applied in some other organizations. However, it would entail establishing new administrative mechanisms in addition to those now existing to oversee TVA's collective bargaining.

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<sup>2</sup>Federal Labor Relations: A Program in Need of Reform (GAO/GGD-91-101, July 30, 1991).

<sup>3</sup>Federal Civilian Personnel: Effects of Unconfirmed Members at the Federal Labor Relations Authority (GAO/GGD-86-29, Dec. 9, 1985) and Federal Civilian Personnel: Federal Labor Relations Authority and Administrative Roles and Case Processing (GAO/GGD-86-57, Mar. 26, 1986).

This legislative approach was followed for collective bargaining in the Foreign Service. The Foreign Service Act of 1980 established an organization for regulating and overseeing collective bargaining within the Foreign Service of the Departments of State, Agriculture, and Commerce; the U.S. Information Agency; and the U.S. Information Development Corporation Agency. This arrangement included a Foreign Service Labor Relations Board and a Foreign Service Impasse Disputes Panel within FLRA.

Congress also established a separate arrangement for labor relations in the General Accounting Office Personnel Act of 1980 (P.L. 96-191, Feb. 15, 1980). The act established a Personnel Appeals Board to make final decisions on matters such as certification of collective bargaining representatives and disputes appealable to the board. The board is to be composed of five members appointed by the Comptroller General in accordance with the 1980 act.

Under the act, the chair of the board is to select, and the Comptroller General is to appoint, a General Counsel whose responsibilities include investigating allegations concerning prohibited personnel practices and prohibited political activities as well as investigating matters under the board's jurisdiction when requested by the board or any member of the board. The board is authorized to order corrective or disciplinary action in cases arising from, among other things, elections and certification of collective bargaining representatives and any labor practice prohibited under the labor-management system established under the act.

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## **Coverage of TVA Labor Organizations Under Federal Standards of Conduct**

The Department of Labor noted after reviewing a draft of our report that any union composed solely of TVA employees is not covered by CSRA standards of conduct for labor organizations. (See app. VI.) Labor believed that our legislative proposals should include provision for such unions to be covered by appropriate standards of conduct. We agree that any legislation considered by Congress affecting TVA's labor-management relations should specifically ensure that TVA and all unions representing its employees are subject to standards of conduct similar to those standards set forth in CSRA and the Labor-Management Reporting and Disclosure Act of 1959.

In this regard, CSRA (5 U.S.C. 7120) establishes standards of conduct to ensure that labor organizations are free from corrupt influences and influences opposed to basic democratic principles. The act sets out standards that labor organizations are to adhere to such as the maintenance

of democratic procedures, periodic elections subject to certain safeguards, and prohibitions of conflicts of interest by officers and agents of labor organizations. Under the act, labor organizations are required to file financial and other reports with the Assistant Secretary of Labor for Labor-Management Relations. This same official is authorized by the act to issue implementing regulations conforming to the principles applied to private organizations.

The Labor-Management and Disclosure Act of 1959 established standards of conduct for private-sector organizations. The act was enacted to eliminate or prevent certain improper practices by labor organizations, employers, labor relations consultants, and their officers and representatives. For example, the act established a bill of rights for members of labor organizations, including such things as equal rights of every member of a labor organization and a voice by members either directly or indirectly in decisions on increases in rates of dues and initiation fees. The act also required financial and other types of reporting to the Secretary of Labor by labor organizations, officers and employees of labor organizations, and employers; prescribed terms of office and election procedures for officers in local, national, and international labor organizations; and gave the Secretary of Labor authority to investigate complaints and bring civil actions to enforce provisions of the act.

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## Conclusions

The information we gathered showed that the conditions allowing TVA to be exempt from federal labor laws, namely, stable labor relations and a desire of the parties to be exempt, did not exist to the same extent today as they did previously. Negotiation disputes have strained relationships between TVA and labor organizations representing its employees. Because of the exemption, the parties do not have the statutory basis for their bargaining that most others have and thus lack some basic rights and protections.

Our basic position on the need for TVA employees to adequately participate in the collective bargaining process and to have rights and protections similar to those granted to most other employees has not changed since our 1980 report on TVA's labor-management relations. However, since that time, the experience with title VII of CSRA has not been positive overall, and we do not favor that alternative for TVA. The best approach, in our view, is for all the parties concerned to work out a solution under TVA's current authority, which imposes relatively few constraints on the parties.

Regardless of the specific approach to be taken, we believe the changes since TVA's exemption and its current situation with the unions indicate a need for TVA to improve its collective bargaining process. Unions do not believe they have a level playing field. TVA management has to a large extent established the framework for the collective bargaining, and the unions have had few avenues for challenging the fairness of that framework. Further, blue-collar employees are not provided with procedures, such as secret ballots and supervised elections, for selecting those union officials who bargain with management.

We favor a cooperative approach by the parties to the current situation because we believe this approach may offer some advantages over solutions mandated by law. Following such an approach in earlier years, TVA management and the unions were able to develop what were viewed as model labor relations. TVA still has broad authority under the TVA act for managing its work force and also has the responsibility for developing productive labor-management relations.

This cooperative approach needs to involve all the parties concerned with TVA's collective bargaining, including the Department of Labor because of its role under the TVA act for resolving certain disputes. The parties may require outside assistance to effectively deal with the situation from agencies such as Labor or FMCS, or individuals specializing in such matters.

If this approach does not result in bargaining arrangements acceptable to the parties, we believe that TVA's exemption from laws establishing bargaining rights and obligations for the parties will no longer be appropriate. Should that be the case, the scope of bargaining rights and the means of resolving disputes are two important considerations. Application of CSRA to TVA would significantly limit its scope of bargaining. NLRA would not impose a similar limitation. In addition, as adapted to USPS, NLRA would provide mechanisms for resolving negotiation disputes and for oversight by NLRB. Although separate legislation tailored to TVA's specific situation is an option, the cost of establishing and operating a new administrative body just for TVA would need to be weighed against using an existing oversight body like NLRB.



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## Recommendations to the Chairman of the TVA Board of Directors

We recommend that the Chairman of TVA's Board of Directors take the initiative in working to reinstate a voluntary, cooperative approach to collective bargaining among all the parties concerned. Following this approach, we recommend that TVA and the labor organizations

- attempt to reach agreement on a framework for collective bargaining that is considered fair to all the parties and that includes administrative procedures and mechanisms to be available to all the parties for resolving negotiation deadlocks and
- work with the Department of Labor to develop better criteria and procedures for resolving wage disputes in a timely manner that are referred to Labor under the TVA act.

We recommend that TVA and the parties determine whether an independent party, such as Labor or FMCS, can assist in making this approach successful and, if so, arrange for this outside assistance.

We recommend that, within 6 months from the date of our report, the parties assess their progress and that TVA report to Congress on the progress made in addressing concerns about (1) uneven bargaining positions and (2) limited avenues for resolving disputes. TVA should include the views of both the Panel and Council in its report.

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## Comments and Our Evaluation

We obtained written comments on a draft of this report from TVA, the Panel, the Council, and Labor. (See app. III through VI.) TVA and the labor organizations differed in their assessments as to the prospects for improving their relations in a voluntary, cooperative approach and the need for legislation to deal with the situation. Specifically, TVA favored a voluntary approach and did not believe legislative action was needed. The Panel was strongly against the voluntary approach and said that legislative relief was fully warranted and appropriate. The Council favored cooperation, perhaps with third-party assistance, that would lead to enactment of legislation providing a new bargaining and dispute resolution framework.

TVA's Chairman of the Board of Directors agreed with our recommendation that TVA take the initiative in working to reinstate a voluntary, cooperative approach to collective bargaining. He said that TVA and the unions can, and should, resolve their issues without unnecessary statutory restrictions. The Chairman described the values and vision that TVA is attempting to inculcate generally in the organization. He also outlined nine initiatives, which he believes will improve labor relations, that TVA

is pursuing. According to the Chairman, these initiatives include (1) recent agreements with the Council to reduce the impact on blue-collar employees of TVA's decision to do construction and modification work under contract and (2) a project undertaken with the Panel to give white-collar employees greater flexibility in choosing among alternative employee benefits plans.

We believe that TVA's actions and initiatives could go a long way toward building a greater sense of trust and cooperation between TVA management and the unions. However, the basic bargaining structure needs attention as well. TVA did not specifically address our recommendations regarding the unions' concerns about their uneven bargaining positions, the need for additional ways of independently resolving negotiation deadlocks, and the possible need for a third party to assist TVA and the unions in improving their relations. In light of TVA's comments, as well as the comments of the Panel and Council discussed below, we question whether the approach TVA has outlined will adequately address the basic concerns of the unions regarding the existing collective bargaining structure.

In comments provided by its Chairperson, the Salary Policy Employee Panel disagreed with our recommended approach that TVA work with the parties to reach agreement on improving the bargaining structure under the TVA Act. The Panel requested that we withdraw our recommendation because it believed that this approach was impossible to achieve. The Panel said the only reasonable solution was legislation, modeled from the USPS legislation. The Panel believed this legislation was needed as soon as possible to provide the unions and their memberships with the same rights possessed by other federal employees.

According to the Panel, a cooperative approach will not and cannot work, mainly because of TVA's stated view that it saw no reason to change the existing structure. The Panel said that TVA's exemption from federal labor laws allows TVA to be the judge and jury in its dealing with the unions. The Panel cited examples of specific provisions in the Articles of Agreement, such as a limited scope of bargaining, to illustrate TVA's dominance and control in collective bargaining.

The evidence provided by the Panel in its comments amplifies and reinforces our findings regarding the deterioration of labor relations at TVA and our conclusion on the need for change. We agree with the Panel that, without either statutory rights and protections for the unions or mutual trust and cooperation, negotiations can become futile.

Although we continue to believe the best approach is for the parties to voluntarily arrive at solutions, comments from TVA, the Panel, and the Council indicate that they may not be able to agree on a new bargaining structure. Should this become the case, Congress may need to intervene to provide the parties with statutory bargaining rights and protections. In this regard, we believe that TVA and the unions need to assess and report to Congress on their progress after a reasonable period (in our view, 6 months from the date of our report). We have revised our recommendation accordingly. If the parties cannot agree by then, Congress should consider removing the exemption to provide TVA employees with statutory bargaining rights and protections.

In addition to disagreeing with our recommendation, the Panel cautioned about placing too much emphasis on the economic conditions as a cause of deteriorating labor relations. The Panel said that worsened economic conditions did not contribute heavily to the deterioration of TVA management's relations with the Panel. According to the Panel, its relations with TVA were substantially shattered before TVA encountered economic difficulties in the 1980s. To support its position, the Panel described specific disputes including three court cases, and deteriorating relationships beginning in 1978 and continuing to the date of its comments.

We included information on TVA's economic challenges in the 1980s to provide a perspective for understanding and assessing the changes that TVA had been required to make in its work force since its 1978 exemption. We believe these work force changes help to explain the deterioration of TVA's labor relations since that time. However, we agree with the Panel, and we recognize that the work force changes most directly affected TVA's blue-collar unions and employees, particularly those employees involved in the construction of nuclear plants. (See pp. 23-25.) Changes affecting these employees are particularly relevant because, historically, TVA has supported its exemption from federal labor relations laws largely on the basis of generally positive relationships with the blue-collar union and employees. For example, in responding to our 1978 report, TVA supported its exemption from labor laws in part by citing a study done by a joint congressional committee in 1949. That study dealt almost exclusively with TVA's relationships with the blue-collar unions.

In commenting on our draft report, the Administrator for the Tennessee Valley Trades and Labor Council said there appeared to be a change in



TVA's attitude as evidenced by the recent negotiation of project agreements on construction and modification work and by discussions between TVA management and the union of certain cases pending in court. The Administrator added that only time will tell whether TVA is sincere in its stated goals of improving its labor relations policies.

Regarding our specific recommendations, the Administrator said the Council favored a voluntary cooperative approach by TVA and the unions, perhaps with third-party assistance, to develop a framework for bargaining and dispute resolution acceptable to the parties. According to the Administrator, once agreed to by the parties, this framework should be submitted to Congress and enacted into law. The Administrator said that if this voluntary approach does not work, the Council would pursue legislative changes to remove TVA's current exemption.

We believe the Council's proposed approach to resolving the issues is consistent with our recommendation. One of the outcomes of the approach we recommended could be proposed legislation developed and agreed to by the parties. If agreement cannot be reached, Congress should consider legislative changes.

Although the Council Administrator said that our report was a factual account of TVA's labor relations situation, he disagreed with our assertion that TVA employees do not elect those representatives who bargain with TVA management. The Administrator said the Council's arrangement for selecting representatives provides for fair representation of TVA employees and complies with the Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act).

The 1959 act prescribes procedures that international, national, and local labor organizations are to follow in electing officers. That act, and both NLRA and CSRA, prescribes standards and procedures to promote basic democratic principles within labor organizations, including election of officers and agents by secret ballots. In addition, these laws require that the elections be supervised by NLRB or FLRA, respectively.

The Council's arrangement, as reflected in its bylaws and agreements with TVA, does not explicitly recognize the democratic principles set forth in the above acts, such as the election of union representatives by secret ballot as prescribed in the 1959 act, NLRA, and CSRA. Rather, according to the Council Administrator, Council members are appointed by the AFL-CIO.

Regarding this Council comment, our basic point is that TVA employees lack adequate control over their designated union representatives, a problem we also reported in 1978. (See p. 40.) In its comments on a draft of this report, the Department of Labor suggested that TVA and unions representing its employees be covered by statutory standards of conduct. Such standards would provide for greater TVA employee influence over their representatives, through prescribed election procedures and other requirements, and also protect against corrupt union practices.

In commenting on our report, the Secretary of Labor suggested clarification of our report relating to Labor's responsibilities under the TVA Act for resolving blue-collar wage disputes. We incorporated the suggested changes as appropriate in our report. In addition, the Secretary suggested that legislative alternatives be considered by Congress for dealing with the TVA situation to provide standards of conduct applicable to TVA and labor organizations representing TVA employees. We agree with the Secretary's suggestion and made changes at appropriate places in the report to recognize the need for such standards.

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## **Matter for Congressional Consideration**

Although both the Panel and Council believed that legislative action was necessary, TVA did not agree and was pursuing initiatives with both the Panel and Council to improve the situation. The parties may need additional time to determine whether a voluntary, cooperative approach can be successful in resolving all the issues. After receiving TVA's progress report, Congress may want to determine if the cooperative approach is workable. If the approach is found to be unworkable, Congress should consider providing TVA management and employees with bargaining rights, obligations, and protections similar to those applicable to most other organizations, including standards of conduct.

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# Labor Organizations Comprising the Salary Policy Employee Panel and the Tennessee Valley Trades and Labor Council as of November 1990

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## Salary Policy Employee Panel

Service Employees' International Union, AFL-CIO  
TVA Public Safety Service Employees' Union  
Office and Professional Employees International Union, AFL-CIO  
TVA Association of Professional Chemists and Chemical Engineers  
TVA Engineering Association, Inc.

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## Tennessee Valley Trades and Labor Council

International Association of Heat and Frost Insulators and Asbestos Workers  
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers  
International Union of Bricklayers and Allied Craftsmen  
United Brotherhood of Carpenters and Joiners of America  
International Brotherhood of Electrical Workers  
International Association of Bridge, Structural and Ornamental Iron Workers  
Laborers' International Union of North America  
International Association of Machinists and Aerospace Workers  
International Union of Operating Engineers  
International Brotherhood of Painters and Allied Trades  
Operative Plasterers' and Cement Masons' International Association of the United States and Canada  
United Union of Roofers, Waterproofers, and Allied Workers  
Sheet Metal Workers' International Association  
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada  
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

# Litigation Cases Involving TVA Labor Relations Issues Filed From January 1987 to September 1990

<b>Date filed</b>	<b>Issue</b>	<b>Status as of October 1990</b>
<b>Cases filed by Council against TVA</b>		
July 1988	Reinstatement of three terminated employees.	Case dismissed December 1988. TVA paid a total of \$46,500 to the employees, the Council, and an attorney.
October 1987	Enforcement of arbitrator's ruling after TVA's alleged failure to comply.	Dismissed March 1989. Judge ruled in favor of TVA finding that TVA complied with the ruling.
November 1987	Whether certain employees should be covered by Panel agreement or Council agreement.	Case dismissed December 1988 because it was not timely filed.
March 1990	TVA's intent to unilaterally modify an employee medical and hospital insurance plan rather than to submit the dispute to arbitration.	Case was dismissed in May 1990 after an undisclosed agreement was reached between the parties.
March 1987	TVA refused to arbitrate the issue of credit for performance.	Judge ruled in favor of the Council in July 1990 to compel arbitration.
July 1987	Enforcement of arbitrator's ruling after TVA's alleged refusal to comply (credit for performance).	TVA believed the arbitration award was inconsistent with federal law and regulations and exceeded authority under the collective bargaining agreements. TVA filed a counterclaim to vacate the award. The case remained open as of October 1990.
September 1989	TVA's alleged refusal to arbitrate certain issues the Council believed TVA should arbitrate.	TVA claimed that most of the issues were not subject to arbitration. The case remained open as of October 1990.
September 1989	TVA's refusal to mediate three proposals not agreed upon during negotiations.	TVA claimed the proposals were not subject to collective bargaining. The case remained open as of October 1990.
June 1990	TVA's alleged refusal to arbitrate on an issue by refusing to use a certain arbitrator, J. Earl Williams.	TVA did not consider Mr. Williams to be an impartial referee and therefore refused to use him once his contract to provide arbitration services expired in May 1990. TVA filed a counterclaim. The case remained open as of October 1990.
March 1990	TVA alleged to have (1) used contract employees for work traditionally done by union employees under the collective bargaining agreement with TVA and (2) paid less than prevailing wage rates. TVA's alleged refusal to submit the prevailing rate controversy to bargaining.	TVA denied the allegations and claimed the Council had not exhausted available administrative remedies. The case remained open as of October 1990.

(continued)

**Appendix II  
Litigation Cases Involving TVA Labor  
Relations Issues Filed From January 1987 to  
September 1990**

<b>Date filed</b>	<b>Issue</b>	<b>Status as of October 1990</b>
<b>Cases filed by Panel against TVA</b>		
January 1989	TVA's failure to reinstate a terminated employee.	Case was dismissed March 1989 after TVA reinstated the employee and paid the attorney fees.
September 1989	TVA's refusal to arbitrate the issue of whether firefighters should be placed under Panel schedules instead of Council schedules.	Case was voluntarily withdrawn by Panel May 1989.
September 1989	TVA's refusal to arbitrate the issue of credit for performance for reduction in force.	The judge initially ruled in favor of the Panel but the decision was reversed by the appellate court. The court ruled that the issue was not subject to arbitration.
September 1990	Panel sought a judicial determination that TVA's compliance with OPM regulations requiring federal agencies to grant credit for performance to employees in a reduction in force was a breach of the Articles of Agreement.	TVA was seeking a dismissal of this suit. The case remained open as of October 1990.
<b>Cases filed by TVA against Panel and Council</b>		
January 1990	TVA sued the Council to have overturned that part of the arbitrator's decision concerning TVA's implementation of an employee residency requirement in 1984.	The case remained open as of October 1990.
February 1989	TVA sued the Panel to have overturned an arbitrator's decision concerning an employee's back pay.	The court ruled in TVA's favor.



# Comments From the Tennessee Valley Authority



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902

Marvin Runyon  
Chairman, Board of Directors

JUL 9 1991

Mr. Richard L. Fogel  
Assistant Comptroller General  
United States General Accounting Office  
Washington, DC 20548

Dear Mr. Fogel:

This responds to the General Accounting Office (GAO) draft report on Labor-Management Relations at the Tennessee Valley Authority.

We have carefully reviewed the draft report and the recommendations presented in it. While we might disagree with some specific statements or characterizations in the report, we believe that it would be more useful to outline TVA's current vision and values and how TVA has been working to improve the labor-management relationship. TVA and the labor organizations representing its employees have worked together for well over 50 years, and while there have been some rough periods for both TVA and the unions, we believe that the relationship is already undergoing positive changes. As in the past, both TVA and the unions can and should resolve their issues together, without unnecessary statutory restrictions.

TVA's vision is "to be the very best electric utility in North America and the most productive and effective agency in the Federal Government." Fully achieving this vision requires embracing several values, including customer service, quality teamwork and communications, and a quality workplace where employees are empowered to truly participate in accomplishment of that vision.

Change is also a necessary ingredient in our vision, and as the report states, the parties must recognize the changes and related challenges that TVA faces with becoming more competitive, reducing costs and stabilizing rates. TVA, its employees, and their representatives must embrace change for us to reach our full potential and achieve our vision. TVA's Board of Directors and top managers have recognized that a cooperative, constructive labor-management relationship is an important

See pp. 55 and 56.

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element in TVA's ultimate success, and I believe that initiatives and changes over the past year or so have and will continue to result in improvements in that relationship. Let me describe some of them:

1. TVA is getting out of the construction and modification business and will now focus on quality customer service and excellence in operations and maintenance of its plants and facilities. To alleviate the impact of the change on hourly trades and labor employees (which comprise the largest group of affected employees), TVA and the Tennessee Valley Trades and Labor Council (Council) reached agreement on two project agreements which cover temporary trades and labor work to be performed by contractors and which will continue the longstanding relationship between TVA and the Council in a somewhat different manner. It is expected that most of these affected trades and labor employees will be employed by the contractors through union hall referral systems provided for in the project agreements. In a joint statement announcing the project agreements, TVA and the Council stated:

These agreements are an excellent example of management and labor working together to establish a framework that will allow work to be done productively and ultimately benefit TVA's customers. TVA and the Council traditionally have had a strong working relationship, and this agreement will further strengthen that partnership.

2. TVA is embarking on a Flexible Benefits project to offer salary policy employees more choice in benefit plans, and representatives designated by the five labor organizations comprising the Salary Policy Employee Panel (Panel) make up fully one half of the membership on the four major Flex Benefits work groups on plan design, pricing, communication, and administration systems support. We anticipate this project to be in place by early next year. Similar efforts are also underway with the Council.
3. In recognition of the severe impact of surplusings and reducing employees, TVA has established an Employee Transition Program which provides surplused annual employees with a program intended to help them identify new positions or retrain for other work either inside or outside TVA, rather than face immediate involuntary reduction in force. We also negotiated increased benefits for employees when positions are surplusd.
4. Managers and supervisors are receiving 80 hours of annual mandatory training to change to a management style which increases the use of employee judgment, involvement, and accountability.

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5. Council and Panel representatives have attended TVA's quarterly key managers' meetings and have named representatives to be members of quality assessment teams evaluating the agency from top to bottom.
6. TVA and the Council have committed to enter negotiations during the summer of 1991 for new labor Agreements covering all annual (permanent) trades and labor employees.
7. TVA and the Panel have agreed to reinstate and fully support local joint cooperative conferences as existed prior to 1981.
8. The Corporate Human Resources function has been realigned with the establishment of a new Employee Relations organization at the vice president level to better focus on labor relations and other employee relations functions.
9. As soon as possible, a group comprised of TVA top managers and negotiating team members and members of both the Council and the Panel will participate in a "Win/Win" seminar on negotiations to be conducted by highly respected labor-management relations experts. The stated goal of the seminar is to enhance "the capacity of the parties to reach good negotiated outcomes to their conflicts and to improve their ability to conduct their working relationships." It is designed to focus conflict resolution activities on interest accommodation as opposed to the use of power or the need for costly rights assertion.

The United States Congress created TVA in 1933 in part as an experiment in progressive government. It was intended, in President Roosevelt's words, to be "a corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise." It is the desire of TVA's Board of Directors to maintain that flexibility and to promote a willingness to change in search of improvement. We do not believe that legislative actions are needed or would be required on this matter. However, we agree with GAO that for change to occur, the "best approach . . . is for all the parties concerned to work out a solution under TVA's current authority." TVA and its unions have experienced many years of a constructive relationship without the need for such legislation, and we know of many organizations, including federal agencies, that have a much less constructive relationship despite coverage by federal labor legislation. As the report points out, legislation is often not the solution to problems but rather may result in the creation of more or

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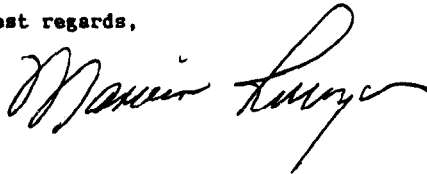
Mr. Richard L. Fogel  
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different problems which are beyond the authority of the parties to remedy. As evidenced by the recent accomplishments referenced above, TVA has recognized the need to improve its labor-management relations and is currently taking action to do so.

To date, we are encouraged that the Panel and Council have joined us in the efforts described above to find mutually acceptable solutions for any problems. We all recognize, however, that TVA must remain competitive to ensure its long-term vitality and survival, and that all parties must join in that effort. Consistent with the recommendation contained in the draft report to the Chairman of the TVA Board of Directors, TVA is prepared to "take the initiative in working to reinstate a voluntary, cooperative approach to collective bargaining among all the parties concerned."

I appreciate the opportunity to comment on the draft report and to share with you TVA's vision and how improved labor-management relations is an important part in achieving that vision.

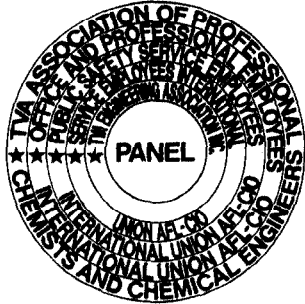
Best regards,



See pp. 55 and 56.

# Comments From the Salary Policy Employee Panel

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



"Representing" TVA SALARY POLICY EMPLOYEES

Faye Orr ■ 919 CHATTANOOGA BANK BLDG., CHATTANOOGA, TN 37402 ■ (615) 751-8604

July 12, 1991

Mr. Richard L. Fogel, Assistant Comptroller General  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Fogel:

Enclosed, please find the Salary Policy Employee Panel comments on the Draft Report of "Labor Relations: Tennessee Valley Authority Situation Needs To Improve."

Thank you for the additional time you provided us in submitting this report.

Very truly yours,

Faye Orr  
Chairperson

FO/ps

opeiu:179  
afl-cio

cc: Salary Policy Employee Panel  
John Kelly  
Joe Finley  
Marvin Runyon

Enclosure

Appendix IV  
Comments From the Salary Policy  
Employee Panel

COMMENTS OF THE SALARY POLICY EMPLOYEE PANEL ON  
GAO DRAFT REPORT ON: "LABOR RELATIONS: TENNESSEE VALLEY  
AUTHORITY SITUATION NEEDS TO IMPROVE"

To: Richard L. Fogel, Assistant Comptroller General  
United States General Accounting Office  
Washington, D. C. 20548

The Salary Policy Employee Panel wishes to commend the GAO and its staff for the thoughtful, analytical Draft Report of June 7, 1991, in which certain recommendations are made. It is readily apparent that the Draft Report explored the current state of labor relations between TVA and its unions and focused attention upon some of the severe problems that require correction.

However, even in view of the excellent Draft Report, the Panel is compelled to disagree with the Recommendation of the Draft at pp. 11-12 that TVA work with all parties concerned to reach agreement on how to best improve the collective bargaining structure under the TVA Act. The Panel, for reasons to be set forth hereinafter, believes that such an approach in 1991 or any immediate year in the foreseeable future is not only impractical but impossible to achieve. The Panel, in all good faith, believes there is no other reasonable alternative to the enactment of corrective legislation as soon as possible.

In addition to this general conclusion and statement of position, the Panel will set forth other comments which are believed pertinent to the Draft Report, and which in most instances, lend support to the primary position taken herein that a cooperative solution between TVA and its union is so nearly

See p. 56.

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impossible that only immediate legislative relief can suffice. In setting forth this position and the further comments to follow, the Panel must reiterate that the views herein are those of the Panel and not any other organization or institution. We are certain these comments will be received in the same good faith spirit in which they are tendered.

I. THE THEORY THAT WORSENERD ECONOMIC CONDITIONS CONTRIBUTED HEAVILY TO THE DETERIORATION OF GOOD LABOR RELATIONS IS NOT APPLICABLE TO THE SALARY POLICY PANEL

In Chapter 2 of the Draft Report, it is set forth at p. 30 that since the 1978 exemption of TVA from federal labor laws, unions believe that relations with management have deteriorated and, "In all likelihood, TVA's changing economic situation has contributed to that view." Among Principal Findings, at p. 6, there is the recognition that since the late 1970s, TVA has retrenched from an era of growth and development, that this transition affected the work force and, "in turn, labor relations." At p. 35 there is a recitation of "significant economic challenges" faced by TVA in the 1980's, with reference to 1982 as a year dominated by recession.

At p. 77 of the Draft, it is set forth: "The evidence we gathered indicates that the change in TVA's economic situation has contributed to reduced labor-management cooperation. The unions need to better recognize this change and the related challenges that TVA faces of becoming more competitive, reducing cost, and stabilizing interest rates."

The Panel is fully cognizant both social and economic

See comment 1.

Now on p. 22.

Now on p. 46.

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conditions do change, have changed, and will surely continue to change, and that TVA and the unions must all react responsibly to those changes. The drastic reductions in force among salaried employees (Figures 2.1 and 2.2), while obviously painful to employees represented by Panel unions and not easy to accept, have not been nearly as much the source of great discord in labor relations as some of the other matters cited in the Draft Report. The Panel will always work as cooperatively as it can with TVA to react positively to any kind of distressing economic situations.

See p. 57.

Accordingly, the Panel believes it would be unwarranted to place too much emphasis on economic conditions as a cause of deteriorating labor relations. This is extremely important in assessing the Draft Report for this reason: in theory, if economic conditions improved, so would labor relations along with them, and all would soon return to the happier days before 1978 when labor relations were viewed as successful. Thus, one would need only to wait patiently until economic conditions improved, and there would once again be harmony and cooperation and no need at all for a statutory structure to define rights, duties, and obligations in labor relations within TVA.

Aside from the unlikelihood and impracticality, human nature being what it is, that this would occur, there is substantial evidence to support the position that sound and harmonious labor relations with TVA, as far as the Panel is concerned, were substantially shattered and a destructive pattern established before economic difficulties were encountered by TVA in the 1980's.



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This is a major point to be made in this Comment. The Draft Report takes note of some of the problems encountered by the Panel in 1981 (p. 45), but we believe further comment is necessary and that there is not yet full recognition of the destructiveness that occurred in that year, along with its foreseeable unpleasant aftermath.

The facts are that in the mid-1970's, decidedly before the economic difficulties of the 1980's were encountered, there began to appear stresses in the Panel's bargaining relationship with TVA. Perhaps this was a natural consequence of years of transition, experience, personnel change, and the inevitable conflicts that time arouses, but unquestionably, TVA began to take a harder line in dealing with Panel unions, who were defenseless to resist it. In 1978, for example for the very first time, TVA and the Panel were unable to reach agreement on salary schedules. The dispute was submitted to binding arbitration that was then in existence in the Articles of Agreement. By terms of the Articles, arbitrators were required to award either the final position of TVA on salaries or the final position of the Panel in full, with no compromising "in-betweens." TVA was successful in the 1978 arbitration, and thus all was still well.

In 1979, again, negotiations did not result in agreement, and for the second successive year, the salary dispute was submitted to binding arbitration. This time, something quite different occurred. The Panel's position was adopted by the arbitrator. TVA reacted severely. Evidence in the Panel's possession, obtained by OPEIU, one of the Panel unions, in later litigation, showed that

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TVA's Board of Directors asked its General Counsel for an opinion as to whether the award in favor of the Panel could be set aside through federal court litigation. When General Counsel's opinion was rendered that it would be unlikely that the award in favor of the Panel could be set aside, TVA then undertook a deliberate, measured campaign to alter the Articles of Agreement and to curb the Panel's bargaining position.

This campaign began in early 1980 when TVA proposed for the first time to re-define the vicinity from which mutually-selected employers were drawn for salary surveys that were an integral part of pay negotiations. The Panel refused to accept this proposal to re-define the vicinity. While this was still under consideration, agreement was reached on salaries without arbitration. Again, it is important to note that this was occurring long before TVA became embroiled in the economic problems that came about in the 1980's.

In 1981, TVA took its hardest line ever. It not only unilaterally re-defined the "vicinity" for salary surveys as it wished, but unilaterally selected for the first time the employers from whom salary data would be taken. When the Panel unsuccessfully sought injunctive relief from this TVA action, a ruling supporting arbitration of this controversy was handed down. The dispute was never arbitrated: one of TVA's demands in the 1981 "negotiations" was that the Panel's request to arbitrate the selection of employers in the vicinity be withdrawn.

TVA then issued its ultimatum to the Panel by letter in May, 1981, that unless agreement was reached on TVA's major demands,

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TVA would terminate the entire Articles of Agreement. Binding salary arbitration had to be eliminated. The vicinity for salary data was re-defined. The arbitration sought by the Panel had to be withdrawn. Salary schedules in two of the schedules were drastically altered, with provisions for marked reductions for new employees while many rates for existing employees were red-circled. The Panel capitulated to these demands at the eleventh hour and termination of the Articles of Agreement was not carried out. (At p. 51, Draft Report, there is noted a TVA claim the TVA cannot ask for a wage concession to remain competitive. It is difficult to understand such a contention because this was exactly what TVA sought in 1981 and achieved.)

The devastation and impact on labor relations between TVA and the Panel caused by the 1981 unilateral actions of TVA was so great that its total effect is still nearly impossible to fully comprehend. From that year onward, TVA was able to use the threat of termination of the Articles as a veritable Sword of Damocles over the heads of Panel negotiators. In 1984, TVA made use of the threat of termination again. Full and free collective bargaining as we understand it was thereafter thwarted. The tone of all negotiations that have followed was "do what TVA wants or else."

Why did TVA take this drastic action in early 1981 to stifle the kind of bargaining that many believed had been successful in the past? There was no showing of economic necessity for it. Some of the answer lies in how TVA viewed its positions in the mid-1970s in dealing with the Panel. The Panel's harder bargaining in

Now on p. 29.

See comment 2.

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1978 and 1979 was not well received. Despite its long-professed policy on dealing with employee unions, TVA as an institution reacted the way most institutions and organizations do when under challenge: it mustered its strength to turn back claims that it viewed as undermining or limiting its authority. As long as the unions would be peaceful, quiescent, "reasonable," and agree with TVA, then labor relations were "successful."

Another, but perhaps lesser, reason came to light in subsequent sex discrimination litigation where the 1981 rates imposed by TVA in Schedule B were challenged as discriminatory against women (a case in which TVA paid \$5 million in settlement). It was revealed that several employers throughout the Tennessee Valley area had made complaints that TVA wage and salary rates were "too high," and thus requiring these private employers to pay more to obtain qualified persons. Ironically, the great majority of these complaints (although not all) were addressed against rates paid to blue collar unions while TVA focused its "corrective action" against salary policy white collar rates. This response to community criticism appeared to be a "make weight" argument for TVA's motivation to thoroughly establish its own control over salary policy unions in their negotiations.

After the "bargaining" debacle of 1981, the Cooperative Conference Program that had long been a proud accomplishment of the parties and which had been contained in Supplementary Agreement 13 was removed from the Articles.

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Now on p. 28.

See comment 3.

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The Draft Report at p. 49 took note of this event.

The entire substance and achievements of TVA's labor relations policy in dealing with salaried unions was thereafter and forever altered. (Veritably, Humpty Dumpty cannot be put back together again.)

II. TVA'S DOMINANCE AND CONTROL BY VIRTUE OF ITS FREEDOM FROM STATUTORY COMPLIANCE ALLOWS IT TO BE JUDGE AND JURY IN ITS DEALING WITH PANEL UNIONS

The Draft Report has duly noted in Chapters 2 and 3 some of the difficulties encountered by Panel unions in dealing with TVA after the 1981 alteration of the relationship. The Articles of Agreement to which the Panel has been compelled to accept are replete with examples of TVA's power and authority which make the bargaining relationship one-sided to a degree not known nor accepted otherwise in American industrial life.

In Article I, TVA has confined its recognition for collective bargaining to the Panel and has required that a single individual to be selected by the Panel can finally and conclusively bind the Panel. While this has aspects of administrative efficiency, it represents a form of TVA dictation to the Panel as to how it will conduct its bargaining with TVA.

In Article II, TVA has specified the matters on which it will consent to bargain with the Panel. Legal standards for the scope of bargaining in the private sector have long been established pertaining to how wages, hours, and working conditions may affect employees, rather than specifying only certain areas

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on which bargaining will be conducted. Then, Article II sets forth specified items on which there will be no bargaining, which further embraces "every other matter not explicitly covered in these Articles" unless mutually agreed to. TVA's authority to withhold consent reduces Panel bargaining only to what TVA is willing to consider.

This is hardly the essence of free collective bargaining. It makes one party totally beholden to the other, without any avenue of relief from any neutral source. The Draft report has recognized some of the difficulties faced by the Panel unions under these arrangements.

The unions at TVA have further responsibilities that the law imposes upon them while at the same time denying them the protections that other statutes provide to other government employees. This bears directly upon TVA's comments as contained in the Draft Report at p. 50 when TVA alludes to its "preference of union membership when making certain personnel decisions." Any such advantage was totally eliminated in 1984 when the U. S. court of Appeals rendered its decision in Bowman v. Tennessee Valley Authority and Salary Policy Employee Panel, 744 F. 2d 1207 (6th Cir., 1984).

In that important case, the Court confirmed that the Panel unions were under a duty of fair representation, just as are unions in the private sector, in representing employees at TVA. The primary and most important union preference provision in the

Now on p. 29.

See comment 4.

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Articles of Agreement, that granting a preference to union members over non-members in avoiding involuntary transfers, was held to be illegal and unenforceable. For the unions to even agree to such a provision in the Articles would be in violation of their duty of fair representation, concluded the Court of Appeals. This judicial ruling would accordingly invalidate any preferences given by TVA to union members over non-members in any employment situation.

TVA's claim, as set forth at p. 50 of the Draft Report that unions presently have "a broader scope of collective bargaining than in most federal agencies" is totally misleading. As long as TVA is allowed to define what may be negotiated, which it now can do and does do, then there is no "broader scope," only a range suitable to TVA and TVA only. TVA's purported belief that some of the larger unions want NLRA coverage because they wish to gain control over representation of employees now represented by smaller unions is likewise not only a misleading and irrelevant diversion but also wrong in fact. No-raiding provisions between unions adequately dispose of such a contention; under NLRB authority, such "control" even if attempted would likely not be successful.

In addition to these "misconceptions" set forth by TVA, the unions are presently confronted with the reality that any gains they make through litigation or appeals to outside parties can thereafter be taken away by TVA under its unilateral powers any time TVA wishes. The best and most oppressive example is fully set forth in two opinions of the U. S. Court of Appeals for the Sixth Circuit in recitations of fact and law.

Now on p. 29.

See comment 5.

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In early 1982, TVA had refused to arbitrate four grievances on a number of subjects brought by the Panel on the grounds they invaded managerial prerogatives and were thus non-arbitrable. The Panel brought suit to compel TVA to arbitrate. When the Panel obtained a court order in the U. S. District Court compelling arbitration, TVA appealed to the U. S. Court of Appeals for the Sixth circuit. That Court, in Salary Policy Employee Panel v. TVA, 731 F. 2d 325 (6th Cir., 1984), affirmed that TVA must arbitrate all four of the grievances. It further said that principles of arbitration law as applied in the private sector were fully applicable to TVA, despite TVA's claim that it ought to be treated differently.

TVA's reaction was swift and decisive. After the Court of Appeals decision was issued under date of April 3, 1984, TVA thereafter on June 12, 1984, issued a newsletter attacking "a series of Panel lawsuits and arbitration decisions..." The newsletter reported that one of TVA's primary aims in the upcoming negotiations would be "to obtain language in the agreement which recognizes that TVA has agreed to negotiate and arbitrate on some issues but not on others." The newsletter reaction is set forth in the text of the opinion of the Court of Appeals in Salary Policy Employee Panel v. TVA, 868 F. 2d 872 (6th Cir., 1989), where the Court astutely commented: "That aim seems to have been accomplished."

The 1989 Court of Appeals opinion, listed in Appendix III of the Draft Report, which this time upheld TVA's right to avoid



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arbitration, constituted another stunning defeat for the Panel and was a judicial affirmation of TVA's ability to accomplish whatever it set out to do in the absence of any controlling law otherwise.

When all these events are taken into account, from the 1981 action to drastically alter the Articles of Agreement to TVA's advantage, to the renewed threat in 1984 to cancel the entire Articles of agreement if TVA did not once again achieve its goals (and which allowed TVA to further restrict the areas of negotiation and arbitration) and to the repeated pressures on the Panel to acquiesce in "bargaining" as TVA wishes, it is little wonder that TVA would tell GAO (p. 50, Draft Report) that the bargaining process is working well. It is, for TVA.

All this further demonstrates the likelihood that TVA simply will not, and likely can not, adopt a new bargaining structure in a cooperative effort with the Panel.

This is so because power and authority, once achieved and demonstrated to be so effective, will not be yielded voluntarily. There is no reason to do so. Of course, TVA officials will say they will be happy to meet and confer with the Panel and be willing to work cooperatively together to improve labor relations without need for legislation. TVA would have nothing to lose with such an approach, while in the end retaining its prerogatives.

This is why a "try cooperation first and see what happens and if it doesn't work, then seek legislation" approach would be harmful to the process, would delay any means of true fairness and justice to employees and their organizations in dealing with TVA,

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and would further frustrate the rightful goals and efforts of the white collar unions.

III. CONCLUSION

TVA has already advised GAO (Draft Report, p. 50) that it sees "no reason to change the existing structure." This is a decisive statement and reaffirmation of TVA's position. As long as the existing structure allows TVA to do basically whatever it wishes to do in its dealing with its unions, there would never be a reason, in TVA's view, to change the existing structure.

This is a major reason why the cooperative approach will not work and can not work. There is not even the slightest realistic hope that it is even possible. The Panel has already made a recent effort that met with nothing but frustration. In August 1990, Panel representatives met with TVA officials and requested that the parties negotiate over changes in the framework of the relationship. These officials agreed to do so. Nothing has happened. Followup requests have produced nothing. To the date of this Comment, not one meeting or one word of substantive discussion has been held.

Even assuming TVA, under the pressures and recommendations now set forth in the Draft Report, might be willing to go through the motions to seek a "cooperative solution" to change the existing structure when there is "no reason" to change it, the possibility of success is so remote that it ought not be pursued further and ought not be further recommended in the Report. The unions have already been seared by their mistake made in their 1976 willingness

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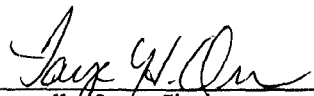
to accede to TVA's continued exemption from statutory coverage, given at a time when there was still a cooperative work-together attitude throughout TVA and before TVA's drift toward greater control and direction over its relationship with the Panel.

Consequently, the Panel must strongly reassert that the only reasonable solution to provide its unions and their memberships a modicum of the same rights possessed by all other federal employees is immediate legislation. This legislative solution should be modeled after that provided in the Postal Service legislation, as has been previously set forth.

The Panel therefore respectfully requests that the Draft Report be amended by withdrawing the recommendation of a first resort to a "voluntary, cooperative approach" because it is so nearly impossible to achieve that it ought not be pursued further. A recommendation of immediate legislative relief is fully warranted and fully appropriate.

Respectfully submitted

SALARY POLICY EMPLOYEE PANEL

  
Faye H. Orr, Chairperson

July 19, 1991

opeiu:179  
afl-cio

See pp. 56 and 57.

The following are GAO's comments on the Salary Policy Employee Panel's July 12, 1991, letter.

## GAO Comments

1. The evidence provided by the Panel on the deterioration of its relations with TVA management is more detailed than, and consistent with, the evidence presented in chapter 2 of our report. We did not independently verify with TVA the additional information provided by the Council.
2. We agree with the Panel's contention that TVA is not precluded by the TVA act from requesting wage concessions from its white-collar employees. The act authorizes the TVA board of directors to fix the compensation of TVA's officers and employees. However, as our report shows (p. 35), the act does require TVA to adjust wage rates for its blue-collar employees on the basis of prevailing rates for similar work in the vicinity. The act does not contain similar requirements for TVA's white-collar employees.
3. The Panel's comments reinforce the message in our report that the unions believe TVA management has taken unfair advantage of its exemption from federal labor relations laws in the past decade. The Panel's comments provide additional evidence, which we did not verify, to support its belief and our report message.
4. We revised the text of our report to recognize this earlier court decision. Notwithstanding the court's decision, TVA has continued to follow a union-preference policy. As indicated on p. 41 of our report, TVA also continued this policy after MSPB recommended that the policy be amended. This matter was beyond the scope of our review of TVA's labor relations, and we plan to address the issue separately.
5. Under the TVA act, TVA has a broader scope of collective bargaining than most federal agencies because of TVA's ability to bargain for pay. However, we agree with the Panel's basic assertion that at present TVA management can unilaterally determine what matters will be bargained, and the unions have relatively few avenues for challenging TVA's decisions.


# Comments From the Tennessee Valley Trades and Labor Council

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

**Pascal DiJames**  
 Administrator  
**Charles F. Ashley**  
 Assistant Administrator

**P.O. Box 699      Sweetwater, Tennessee 37874      Phone: 615-337-4111**  
**Marvin E. Bradford, President      Fax: 615-337-5459      Clyde R. Caldwell, Jr., Vice President**

## TENNESSEE VALLEY TRADES and LABOR COUNCIL



### AFFILIATED ORGANIZATIONS

International Association of Heat and Frost Insulators and Asbestos Workers International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers International Union of Bricklayers and Allied Trades United Brotherhood of Carpenters and Joiners of America International Brotherhood of Electrical Workers	International Association of Bridge, Structural and Ornamental Iron Workers Laborers' International Union of North America International Association of Machinists and Aerospace Workers International Union of Operating Engineers International Brotherhood of Painters and Allied Trades	Operative Plasterers and Cement Masons International Association United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry United Union of Roofers, Waterproofers and Allied Workers Sheet Metal Workers' International Association International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers
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July 1, 1991

Mr. Richard L. Fogel  
 Assistant Comptroller General  
 United States  
 General Accounting Office  
 Washington, DC 20548

Dear Mr. Fogel:

The following comments concerning the United States General Accounting Office's draft report of Labor-Management Relations of the Tennessee Valley Authority (TVA) and the Tennessee Valley Trades and Labor Council and other unions and/or organizations representing employees employed by the TVA is submitted by the Tennessee Valley Trades and Labor Council.

The Tennessee Valley Trades and Labor Council finds the report a factual account of the situation that exist at the time of the investigation in Labor-Management Relations with the following exception:

Page 68: Reference is made that Some Union Representatives Not Elected by TVA Employees. I draw your attention to Title IV of the Landrum-Griffin Act. In a direct or indirect manner, all the union representatives who negotiate with TVA are elected, or appointed by those elected, by the TVA employees that they represent. The Tennessee Valley Trades and Labor Council's position on this issue is that fair representation of TVA employees is provided by the arrangement that exist under the Landrum-Griffin Act. Even though TVA is exempt from coverage, the labor unions that are party to the TVA/Tennessee Valley Trades and Labor Council contract falls under the umbrella of the Landrum-Griffin Act for its elected representatives.

Now on p. 41.  
See pp. 58 and 59.

Appendix V  
Comments From the Tennessee Valley Trades  
and Labor Council

Mr. Richard L. Fogel  
Page 2  
July 1, 1991

The General Accounting Office report ignores the reality of construction industry labor relations, in which many large projects are handled through project agreement negotiated at a national or council level in order to coordinate the varying terms of different trades' collective bargaining agreements.

As a result of the restructuring of TVA, the Tennessee Valley Trades and Labor Council is presently exploring its internal operations to determine whether changes are necessary to better meet the needs of the employees in the new TVA environment.

There appears to be a change in attitude at TVA regarding collective bargaining negotiations. This is evidenced by the negotiating of the project agreements and the current discussion between TVA and the Tennessee Valley Trades and Labor Council to settle the cases now pending before the Sixth Circuit Court of Appeals. The Tennessee Valley Trades and Labor Council and TVA are in the process of working with the Department of Labor on Win-Win bargaining technique. Of course, only time will tell whether TVA is sincere in its stated goals of improving its labor relations policies.

Since the original General Accounting Office investigation concerning TVA Labor Relations office, a major change has occurred in that TVA has decided to contract out the bulk of all work except operations and maintenance of their facilities. TVA and the Tennessee Valley Trades and Labor Council agreed to a 6-Union concept in the operations and maintenance spectrum of TVA (its annual employees). This 6-Union concept should enable the Tennessee Valley Trades and Labor Council to better suit the needs of the TVA employees represented by the Tennessee Valley Trades and Labor Council.

See pp. 57 and 58.

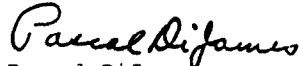
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Page 3  
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The Tennessee Valley Trades and Labor Council agrees with the General Accounting Office's alternatives for approaching the current TVA labor situation with one addition. The Tennessee Valley Trades and Labor Council favors a voluntary cooperative approach by TVA and the unions. Perhaps with the help of an independent third party to work out a framework for bargaining and dispute resolution acceptable to the parties. Upon resolution, the parties would submit the same to the U.S. Congress to be passed into law to cover TVA and the unions.

If TVA and its unions cannot agree on a voluntary, cooperative approach to Labor-Management Relations, the Tennessee Valley Trades and Labor Council would agree that it must pursue legislative changes to remove the exemption TVA now has to current labor laws and give TVA statutorily-based employees rights similar to those of other organized employees.

Sincerely yours,



Pascal DiJames  
Administrator  
Tennessee Valley Trades and Labor Council

FD:vc

Enc. Copy Landrum-Griffin Act

See comment 1.

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**Appendix V  
Comments From the Tennessee Valley Trades  
and Labor Council**

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The following are GAO's comments on the Tennessee Valley Trades and Labor Council's July 1, 1991, letter.

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**GAO Comments**

1. We have not included a copy of the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) in our report. We discuss the applicability of this act to labor organizations representing TVA employees on p. 90 of our report.



# Comments From the Department of Labor

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

JUL 10 1991

The Honorable Richard L. Fogel  
Assistant Comptroller General  
General Accounting Office  
Washington, D.C. 20548

Dear Mr. Fogel:

This is to submit the Department of Labor's comments on the General Accounting Office's (GAO) draft report, "Labor-Management Relations: Tennessee Valley Authority Situation Needs to Improve." The report discusses matters that affect the Department of Labor's responsibilities under the Tennessee Valley Authority Act of 1933, as amended.

The Tennessee Valley Authority (TVA) is statutorily exempt from federal labor relations laws granting employees the right to collectively bargain with employers. According to the draft report, six Members of Congress requested the General Accounting Office to assess whether TVA's exemption was still appropriate. In the draft report, the GAO addresses this request and concludes that changes which have occurred since TVA's exemption was enacted and its current situation with the unions indicate a need for TVA to improve its collective bargaining process.

Under the Tennessee Valley Authority Act, unions representing TVA's blue-collar workers can appeal wage offers to the Department of Labor. This right to appeal provides the blue-collar unions with an independent review and resolution of wage disputes. The GAO draft report discusses the Department of Labor's handling of the TVA blue-collar wage disputes. We have several comments on this issue. Those comments and our proposed language to correct or clarify the report are discussed in the following paragraphs.

- o First, the draft report states (pages 8-9) that unresolved wage disputes "have sometimes remained at Labor for several years awaiting decisions." Although the current process can be lengthy, to our knowledge there have been only three such disputes where the Department has not rendered a decision within twelve months of the appeal. (In one of these cases, the parties to the dispute have not provided the Department with the necessary data to resolve the appeal.) We propose that the language on pages 8 and 9 be replaced with the following language:

The Department of Labor has the responsibility of resolving blue-collar wage disputes. This can be a lengthy process which may take more than a year between the first notice of appeal and a final decision by

See comment 1.

Labor. One appeal, filed in February 1989, was not decided by Labor until December 1990. Two other appeals, filed in February and March 1989, have not yet been decided. In one of these cases, the parties to the dispute have not submitted all of the required data to Labor. The other case is now being reviewed by Labor.

Disputes which are submitted to the Department of Labor for resolution are reviewed based on data submitted by TVA and the union. As a matter of longstanding policy and practice, Labor does not conduct its own wage survey, but only considers data submitted by the parties. Labor requires that all information submitted be shared with all interested parties, and this has contributed to the lengthy process.

- o Second, the Employment Standards Administration's Wage and Hour Division (WHD) at the Department of Labor does not have definitive written criteria and guidelines for processing such appeals (see page 60 of the draft report). The WHD, however, has consistently considered only information and data submitted by the parties. We propose that the language in the second paragraph on page 60 be replaced with the following material:

Although the blue-collar unions' right of appeal to Labor provides for independent review and resolution of wage disputes, the information we gathered shows that this resolution process is not working very well. When the Employment Standards Administration's Wage and Hour Division at the Department of Labor receives a notice of intent to appeal pursuant to Section 3 from one of the 15 international craft unions signatory to the general collective bargaining agreement with TVA, it acknowledges that notice, advises TVA of that union's intent to appeal, and requests that both parties to the dispute submit all pertinent wage data within a specified time period. Labor's final determination is based on review and analysis of the data submitted by both parties; as a matter of longstanding policy and practice, the Wage and Hour Division does not conduct its own wage surveys in these matters but only considers data submitted, and usually agreed to by both parties. Labor officials responsible for processing the unions' appeals said that wage rate appeals submitted under the TVA Act are unlike the wage determinations that Labor makes under other statutes which provide more specific criteria for setting wage rates.

- o Third, in two places (pages 9 and 60), the draft report cites an incorrect history regarding appeals to the Department. In 1989 (not 1988), three (not four) appeals

Now on p. 35.

See comment 2.  
See pp. 35 and 36.

Now on p. 35 only.  
See comment 3.

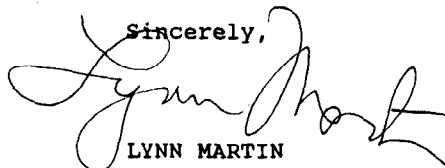
were filed with the Department. A decision on one (International Brotherhood of Electrical Workers) was rendered by the Department in December 1990, not in April 1991 as reported. One appeal is still pending, and the Department has only received notice of intent to appeal on the third. In the latter case, prevailing wage information was never submitted by the union. The discrepancy on page 9 has been addressed by the proposed language beginning on page 1 of this letter. We also propose that the language in the third paragraph on page 60 be replaced with the following material:

After the 1988 negotiations failed to produce agreements on some pay rates, 3 of the 15 unions filed notices of appeal with Labor contesting TVA's final wage proposals. One appeal was decided in December 1990. A second appeal is still under review by Labor, and, in the third appeal, the parties have not yet submitted all of the required information. Officials at the Department of Labor said that the appeal decided in December 1990 required a review of substantial volumes of documents provided by both TVA and the union. Labor had only one employee assigned, on a part-time basis, to review the appeals.

Finally, we also note that because of TVA's exclusion from the definition of "agency" in the Civil Service Reform Act of 1978 (CSRA) (See 5 U.S.C. 7103 (a)(3)(E)), any union composed solely of TVA employees is not covered by the CSRA standards of conduct for labor organizations (5 U.S.C. 7120). We have examined the proposals in the GAO report, which are identified as Alternative II A (National Labor Relations Act coverage) and Alternative II C (specific legislation for TVA's unique bargaining situation), in light of this problem. To address this problem, the proposals should include provisions for Labor-Management Reporting and Disclosure Act coverage, as provided in the Postal Reorganization Act for unions of Postal Service employees, or separate standards of conduct, as provided in the Foreign Service Act for unions of Foreign Service employees.

In conclusion, with regard to the recommendation (page 92) that consideration be given to seeking assistance from this Department or the Federal Mediation and Conciliation Service, we would be pleased to assist the parties in revitalizing their collective bargaining relationship. Also, we will work with the General Accounting Office so as to expedite the completion of the report.

Sincerely,



LYNN MARTIN

See pp. 35 and 36.

See comment 4.

Now on p. 55.

The following are GAO's comments on the Department of Labor's July 30, 1991, letter.

## GAO Comments

1. As discussed on p. 35, a chronology provided by Labor officials who were directly responsible for processing the appeals, as well as data in the Secretary's July 30, 1991, letter show that by July 1991 Labor still had not made decisions on two of the three appeals filed by unions in early 1990. We included in chapter 3 of our report more detailed information on the status of all notices of appeals filed by unions following the 1989 negotiations. We deleted from the Executive Summary details on the time required to process individual appeals. We incorporated at appropriate places in chapter 3 the language suggested by Labor to describe its process for reviewing the appeals.
2. Labor suggested language to more accurately describe the process it follows in handling appeals. We incorporated Labor's language at the appropriate places in the report.
3. The draft report that we submitted to Labor showed the correct number of unions filing notices of appeals and the correct date of the notices according to (1) a chronology of actions on the appeals provided by Labor officials directly responsible for processing the appeals and (2) information provided by unions filing the appeals. This chronology shows that four unions filed notices of appeals with Labor in February and March 1990. These appeals were filed by the unions with Labor following the 1989 wage negotiations.  
  
The decision made by Labor on one union's appeal is documented in a December 26, 1990, letter from Labor to TVA and the union. This is the date used in our draft report. After receiving Labor's July 1991 letter, responsible Wage and Hour Division officials at Labor, as well as unions filing the appeals, confirmed that the information in our report was correct. To clarify the matter, we provided more detailed information in chapter 3 on all four notices of appeal filed by unions after final 1989 negotiations.
4. We agree that unions representing TVA employees should be subject to provisions of the Labor-Management Reporting Disclosure Act of 1959. We included information at appropriate places in the report to address this issue.

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# Major Contributors to This Report

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**General Government  
Division, Washington,  
D.C.**

James T. Campbell, Assistant Director, Federal Human Resource Management Issues  
Marion E. Abner, Secretary

---

**Office of General  
Counsel**

V. Bruce Goddard, Senior Attorney

---

**Atlanta Regional  
Office**

Charles L. Chappell, Evaluator-in-Charge  
Johnny W. Clark, Evaluator  
John T. Crawford, Evaluator

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# Related GAO Products

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Federal Labor Relations: A Program in Need of Reform (GAO/GGD-91-101, July 30, 1991).

National Labor Relations Board: Action Needed To Improve Case Processing Time at Headquarters (GAO/HRD-91-29 Jan. 7, 1991).

TVA Management: Information on Compensation for Top Managers (GAO/RCED-89-137BR, May 17, 1989).

Tennessee Valley Authority: Special Air Transportation Services Provided to Manager of Nuclear Power (GAO/GGD-89-117BR, Sept. 25, 1989).

Federal Civilian Personnel: Federal Labor Relations Authority and Administrative Roles and Case Processing (GAO/GGD-86-57, Mar. 26, 1986).

Federal Civilian Personnel: Effects of Unconfirmed Members at the Federal Labor Relations Authority (GAO/GGD-86-29, Dec. 9, 1985).

Triennial Assessment of the Tennessee Valley Authority — Fiscal Years 1980-1983 (GAO/RCED 83-123, Apr. 15, 1983).

Tennessee Valley Authority: Options for Oversight (EMD-84-54, Mar. 19, 1982).

Triennial Assessment of the Tennessee Valley Authority — Fiscal Years 1977-1979 (EMD-80-91, Aug. 13, 1980).

Additional Safeguards Needed for Tennessee Valley Trades and Labor to Protect Their Interests in Collective Bargaining (FPCD-78-12, Mar. 15, 1978).

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